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सत्यमेव जयते

भारत का राजपत्र
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सं. 3] नई दिल्ली, जनवरी 12—जनवरी 18, 2014, शनिवार/पौष 22—पौष 28, 1935
No. 3] NEW DELHI, JANUARY 12—JANUARY 18, 2014, SATURDAY/PAUSA 22—PAUSA 28, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 5 दिसंबर, 2013

का॰आ॰ 131.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री जग मोहन शर्मा (जन्म तिथि: 29.10.1949) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक ऑफ इंडिया के निदेशक मण्डल में चार्टर्ड अकाउंटैंट श्रेणी के अंतर्गत अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/41/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 5th December, 2013

S.O. 131.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Sh. Jag Mohan Sharma (DoB: 29.10.1949) as part-time Non-official Director under Chartered Accountant category on the Board of Directors of Union Bank of India for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/41/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 दिसंबर, 2013

का॰आ॰ 132.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री ए॰ सुब्रहमण्या (जन्म तिथि: 12.02.1971) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो,

देना बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/42/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th December, 2013

S.O. 132.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Sh. A. Subramanya (DoB: 12.02.1971) as part-time Non-official Director on the Board of Directors of Dena Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/42/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 दिसंबर, 2013

का॰आ॰ 133.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री मोचेर्ला साईराम भास्कर (जन्म तिथि: 27.08.1964) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, केनरा बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/27/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th December, 2013

S.O. 133.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Sh. Mocherla Sairam Bhaskar (DoB: 27.08.1964) as part-time Non-official Director on the Board of Directors of Canara Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/27/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 दिसंबर, 2013

का॰आ॰ 134.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्रीमती एस॰ सुजाता (जन्म तिथि: 15.12.1971) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन ओवरसीज बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/26/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th December, 2013

S.O. 134.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Smt. S. Sujatha (DoB: 15.12.1971) as part-time Non-official Director on the Board of Directors of Indian Overseas Bank for a period of three years, from the date of notification of her appointment or until further orders, whichever is earlier.

[F.No. 6/26/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 6 दिसंबर, 2013

का॰आ॰ 135.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सुनील हुकुमचंद कोचेटा (जन्म तिथि: 01.06.1958) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, केनरा बैंक के निदेशक मण्डल में चार्टर्ड अकाउंटैंट श्रैणी के अंतर्गत अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/39/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 6th December, 2013

S.O. 135.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Sh. Sunil Hukumchand Kocheta

(DoB: 01.06.1958) as part-time Non-official Director under Chartered Accountant category on the Board of Directors of Canara Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/39/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 9 दिसंबर, 2013

का॰आ॰ 136.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) खंड (ग) के उप-खण्ड (i) के उपबंध सेंट्रल बैंक ऑफ इंडिया पर लागू नहीं होंगे, जहां तक उनका संबंध बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री राजीव ऋषि को इंडो जाम्बिया बैंक लि॰ (आईजेडबी) के बोर्ड में निदेशक के रूप में नामित किए जाने से है।

[फा॰ सं॰ 13/11/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 9th December, 2013

S.O. 136.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Central Bank of India in so far as it relates to the nomination of Rajeev Rishi, Chairman & Managing Director of the Bank on the Board of Indo Zambia Bank Ltd. (IZB) as Director.

[F. No. 13/11/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 12 दिसंबर, 2013

का॰आ॰ 137.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री ए॰बी॰डी॰ बदुशास (जन्म तिथि: 19.08.1962) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन ओवरसीज बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/29/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 137.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Secheme, 1970/1980, the Central Government hereby nominates Sh. A.B.D. (DoB: 19.08.1962) as part-time Non-official Director on the Board of Directors of Indian Overseas Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/29/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 12 दिसंबर, 2013

का॰आ॰ 138.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, डॉ॰ नैना शर्मा (जन्म तिथि: 21.05.1953) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, आंध्रा बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/33/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 138.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Secheme, 1970/1980, the Central Government hereby nominates Dr. Naina Sharma (DoB: 21.05.1953) as part-time Non-official Director on the Board of Directors of Andhra Bank for a period of three years, from the date of notification of her appointment or until further orders, whichever is earlier.

[F.No. 6/33/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 12 दिसंबर, 2013

का॰आ॰ 139.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री मधु सूदन साहू (जन्म तिथि: 02.05.1959) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले

हो, ओरियंटल बैंक ऑफ कॉमर्स के निदेशक मंण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/43/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 139.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri Madhu Sudan Sahoo (DoB: 02.05.1959) as part-time Non-official Director on the Board of Directors of Oriental Bank of Commerce for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/43/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 13 दिसंबर, 2013

का॰आ॰ 140.—राष्ट्रीय कृषि एवं ग्रामीण विकास बैक अधिनियम, 1981 (1981 का 61) की धारा 6 की उप-धारा (1) के खंड (क) के साथ पठित उप-धारा (2) और धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री हर्ष कुमार भानवाला (जन्म तिथि: 27.11.1961) कार्यपालक निदेशक, इंडिया इंफ्रास्ट्रक्चर फाइनेंस कंपनी लिमिटेड (आईआईएफसीएल) को उनके द्वारा पदभार ग्रहण करने की तिथि से 5 साल तक अथवा अगले आदेशों तक, जो भी पहले हो, राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नाबार्ड) के अध्यक्ष के रूप में नामित करते हैं।

[फा॰ सं॰ 7/4/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 13th December, 2013

S.O. 140.—In exercise of the powers conferred by clause (a) of sub-section (1) of Section 6 read with sub-section (2) thereof and sub-section (1) of Section 7 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government hereby appoints Sh. Harsh Kumar Bhanwala (DoB: 27.11.1961), Executive Director, India Infrastructure Finance Company Ltd. (IIFCL) as Chairman, National Bank for Agriculture and Rural Development (NABARD), for a period of five years from the date of his taking over the charge of the post or until further orders, whichever is earlier.

[F. No.7/4/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 13 दिसंबर, 2013

का॰आ॰ 141.—राष्ट्रीयकृत बैक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) एवं खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सी॰वी॰आर॰ राजेन्द्रन (जन्म तिथि: 08.04.1955) कार्यपालक निदेशक, बैंक ऑफ महाराष्ट्र को उनके द्वारा पदभार ग्रहण करने की तिथि से तथा दिनांक 30.04.2015 तक, अर्थात्, उनकी अधिवर्षिता की तारीख तक, अथवा अगले आदेशों तक, जो भी पहले हो, आंध्रा बैंक के अध्यक्ष एवं प्रबंधक निदेशक के रूप में नामित करती है।

[फा॰ सं॰ 4/4/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 13th December, 2013

S.O. 141.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri C.V.R. Rajendran (DoB: 08.04.1955) Executive Director, Bank of Maharashtra as Chairman and Managing Director, Andhra Bank, from the date of his taking over the charge of the post and upto 30-4-2015, *i.e.* the date of his superannuation or until further orders whichever is earlier.

[F. No. 4/4/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 18 दिसंबर, 2013

का॰आ॰ 142.—राष्ट्रीयकृत बैक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री संजीव कुमार शर्मा (जन्म तिथि: 16.07.1961) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इलाहाबाद बैंक के निदेशक मण्डल में चार्टर्ड अकाउंटैंट श्रेणी के अंतर्गत अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/37/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 18th December, 2013

S.O. 142.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri Sanjeev Kumar Sharma (DoB: 16.07.1961) as part-time Non-official Director under Chartered Accountant category on the Board of Directors of

Allahabad Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/37/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 19 दिसंबर, 2013

का॰आ॰ 143.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) एवं (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्रीमती एन॰एस॰ रत्नप्रभा (जन्म तिथि: 19.07.1962) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेंट्रल बैंक ऑफ इंडिया के निदेशक मंण्डल में अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰ सं॰ 6/50/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 19th December, 2013

S.O. 143.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Smt. N.S. Ratnaprabha (DoB: 19.07.1962) as part-time Non-official Director on the Board of Directors of Central Bank of India for a period of three years, from the date of notification of her appointment or until further orders, whichever is a earlier.

[F. No. 6/50/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 26 दिसंबर, 2013

का॰आ॰ 144.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 की धारा 9(2) की उप-धारा (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 के खंड 9 के उप-खंड 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री आदिश कुमार जैन (जन्म तिथि: 13.12.1959) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, कारपोरेशन बैंक के निदेशक मण्डल में चार्टर्ड अकाउंटेंट श्रेणी के अंतर्गत अंश-कालिक गैर-सरकारी निदेशक नामित करती है।

[फा॰सं॰ 6/40/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 26th December, 2013

S.O. 144.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri Adish Kumar Jain (DoB: 13.12.1959) as part-time Non-official Director under Chartered Accountant category on the Board of Directors of Corporation Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/40/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 26 दिसंबर, 2013

का॰आ॰ 145.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) एवं खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री अरूण तिवारी (जन्म तिथि: 01.07.1957) कार्यपालक निदेशक, इलाहाबाद बैंक को उनके द्वारा पदभार ग्रहण करने की तिथि से तथा दिनांक 30.06.2017 तक, अर्थात्, उनकी अधिवर्षिता की तारीख तक, अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक ऑफ इंडिया के अध्यक्ष एवं प्रबंधक निदेशक के रूप में नामित करती है।

[फा॰ सं॰ 4/4/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 26th December, 2013

S.O. 145.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri Arun Tiwari (DoB: 01.07.1957) Exexutive Director, Allahabad Bank as Chairman and Managing Director, Union Bank of India, from the date of his taking over the charge of the post and upto 30.06.2017, i.e. the date of his superannuation or until further orders, whichever is earlier.

[F. No. 4/4/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 26 दिसंबर, 2013

का॰आ॰ 146.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा 2(क) के साथ पठित धारा 25 की उपधारा (1) के खंड (गख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्द्वारा, श्री रंजीत कुमार (जन्म तिथि: 15.04.1957), मुख्य प्रबंधक को उनकी नियुक्ति की अधिसूचना की

तारीख से तीन वर्षों की अवधि के लिए अथवा स्टेट बैंक आफ पटियाला के अधिकारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, स्टेट बैंक आफ पटियाला के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा॰ सं॰ 6/1/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 26th December, 2013

S.O. 146.—In exercise of the powers conferred by clause (cb) of the sub-section (1) of section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Ranjit Kumar (DoB: 15.04.1957), Chief Manager, as Officer Employee Director on the Board of Directors of State Bank of Patiala, for a period of three years from the date of notification of his appointment or until he ceases to be an officer of the State Bank of Patila or until further orders, whichever is earlier.

[F. No. 6/1/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 147.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खंड (ख) और धारा 20 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार श्री पी. प्रदीप कुमार (जन्म तिथि: 02.10.1955), उप प्रबंध निदेशक, भारतीय स्टेट बैंक को उनके द्वारा पद का कार्य-भार ग्रहण करने की तारीख से 31.10.2015 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक या अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक में प्रबंध निदेशक नियुक्त करती है।

[फा॰ सं॰ 2/6/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 27th December, 2013

S.O. 147.—In exercise of the powers conferred by clause (b) of section (19) and Sub-section (1) of Section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, hereby appoints Shri P. Pradeep Kumar (DoB:02.10.1955), Deputy Managing Director, State Bank of India as Managing Director, State Bank of India, from the date of taking over the charge of the post and upto 31-10-2015 i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F. No. 2/6/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 148.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतदद्वारा, श्री आर. के.गुप्ता (जन्म तिथि: 16.04.1960), महा प्रबंधक देना बैंक को पद का कार्य-भार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक ऑफ महाराष्ट्र में कार्यकारी निदेशक के पद पर नियुक्त करती है।

[फा॰ सं॰ 4/5/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 31st December, 2013

S.O. 148.—In exercise of the powers conferred by clause (a) of Sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970/1980 read with sub-caluse (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Shri R.K. Gupta (DoB:16-4-1960), General Manager, Dena Bank as Executive Director, Bank of Maharashtra, for a period of five years from the date of his taking over charge of the post, or until further orders,whichever is earlier.

[F. No. 4/5/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 149.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिर्जव बैंक की सिफारिश पर, एतदद्वारा, घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 10(1)(ग)(i) के उपबंध श्री श्याम श्रीनिवासन, प्रबंध निदेशक एंव मुख्य कार्यकारी अधिकारी, फेडरल बैंक लिमिटेड पर लागू नहीं होंगे, जहां इसका संबंध आईडीबीआई फेडरल लाइफ इंश्योरेंस कंपनी लिमिटेड (आईएफएलआईसी) के बोर्ड में उन्हें नामित किए जाने से है।

[फा॰ सं॰ 6/12/2013-बीओ-II]
तीर्थ राम, अवर सचिव

New Delhi, the 7th January, 2014

S.O. 149.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendations of Reserve bank of India, hereby declares that the provisions of Section 10(1)(c) (i) of the Banking Regulation Act, 1949 shall not apply to Shri Shyam Srinivasan, Managing Director & Chief Executive Officer, the Federal Bank Limited in so far as they relate to his nomination to the Board of IDBI Federal Life Insurance Co. Limited (IFLIC).

[F. No. 6/12/2013-BO-II]

TIRTH RAM, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 150.—केन्द्र सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित भारत की उच्चतम न्यायालय, नई दिल्ली में अयोध्या के विवादित ढांचा विध्वंस से संबंधित मामले एसएलपी (सीआरएल) सं. 2275/2011 (के.अ. ब्यूरो बनाम कल्याण सिंह एवं अन्य) में तथा इससे संबद्ध या इसी संव्यवहार में अन्य मामलों में उपस्थित होने के लिए श्री राजीव धवन, अधिवक्ता को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/60/2013-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st December, 2013

S.O. 150.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Rajeev Dhavan, Advocate as Special Public Prosecutor for appearing in SLP(Crl.) No. 2275/2011 (CBI Vs. Kalyan Singh and others) in cases pertaining to the demolition of the disputed structure at Ayodhya, instituted by the Delhi Special Police Establishment (C.B.I.) in the Supreme Court of India, New Delhi and other matters connected therewith and incidental thereto.

[No. 225/60/2013-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 151.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना द्वारा संस्थापित के॰अ॰ ब्यूरो मामले, गाजियाबाद, उत्तर प्रदेश के विशेष न्यायाधीश के न्यायालय में पीएफ घोटाला मामला आरसी 1(ए)/2008-एसीबी, गाजियाबाद में परीक्षण का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में उक्त मामले से उत्पन्न अपीलों, पुनरीक्षणों अथवा या इससे उत्पन्न अन्य मामलों का संचालन करने के लिए श्री वी.के. शर्मा, वकील को विशेष लोक अभियोजक नियुक्त करती है।

[सं॰ 225/29/2013-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 31st December, 2013

S.O. 151.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri V.K. Sharma, Advocates as Special Public Prosecutor for conducting trial of PF scam case RC 1(A)/2008-ACB, Ghaziabad in the Court of Spl. Judge, CBI cases, Ghaziabad, Uttar Pradesh instituted by the Delhi Special Police Establishment and appeals, revisions or other matters arising out of the said cases in revisional or appellate courts established by law.

[No. 225/29/2013-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 1 जनवरी, 2014

का॰आ॰ 152.—केन्द्रीय सरकार, एतद्द्वारा विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 सहपठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश सरकार शासन के गृह (पुलिस) अनुभाग-14 निर्गत अधिसूचना संख्या 2235/6-पी यू-14-13-70(600)/13, लखनऊ दिनांक 25 जुलाई, 2013 द्वारा प्राप्त सहमति से जीयनपुर कस्बे में श्री सर्वेश सिंह उर्फ सीपू सिंह की हत्या के संबंध में थाना-जीयानपुर, जिला-आजमगढ़, उत्तर प्रदेश में भारतीय दंड संहिता, 1860 (1860 का अधिनियम, सं॰ 35) की धारा 147, 302 और 120-बी के अंतर्गत दर्ज अपराध सं॰ 348/13 तथा उपरोक्त मामले से संबंधित प्रयास करने, उकसाने और षडयंत्र करने का अन्वेषण करने के लिए दिल्ली विशेष पुलिस संस्थापना के सदस्यों की शक्तियों और न्यायक्षेत्र का विस्तार संपूर्ण उत्तर प्रदेश राज्य पर करती है।

[सं. 228/56/2013-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 1st January, 2014

S.O. 152.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Grih (Police) Anubhag-14, Lucknow vide Notification No. 2235/6-PU-14-13-70(600)/13 dated 25th July, 2013, hereby extents the power and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for investigation of case Crime No. 348/13 under sections 147, 302 and 120-B of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Jiyanpur District Azamgarh, Uttar Pradesh relating to murder of Mr. Sarvesh Singh alias Sipu Singh at Jiyanpur town (Uttar Pradesh) and attempts, abetments and conspiracies in relation to the above mentioned case.

[No. 228/56/2013-AVD-II]
RAJIV JAIN, Under Secy.

मानव संसाधन विकास मंत्रालय

(स्कूल शिक्षा और साक्षरता विभाग)

(एनएलएम-IV अनुभाग)

नई दिल्ली, 24 दिसंबर, 2013

का॰आ॰ 153.—भारत सरकार की अधिसूचना संख्या एफ-46-3/2008-एई-4/एनएलएम-4 दिनांक 07.07.2010 के माध्यम से गठित राष्ट्रीय साक्षरता मिशन प्राधिकरण (एनएलएमए)

परिषद् और 31.03.2013 तक बढ़ाई हुई अवधि समाप्त होने के पश्चात् और भारत सरकार के संकल्प संख्या एफ-9-5/87-एई-1 दिनांक 20.06.1988 (पुनः संकल्प संख्या एफ-14-9/1992-एई-1 दिनांक 25.09.1992 और फा॰ 9-18/94-एई-1 दिनांक 13.12.1994 के माध्यम से संशोधित) के अनुच्छेद 4 में प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित सदस्यों के साथ परिषद् को पुनर्गठित करने का निर्णय लिया गया है:

क्र॰सं॰	श्रेणी	संघटन
क.	**अध्यक्ष,पदेन**	**मानव संसाधन विकास मंत्री, भारत सरकार**
ख.	**उपाध्यक्ष, पदेन**	**राज्य मंत्री, मानव संसाधन विकास मंत्रालय, भारत सरकार**
ग.	**सदस्य (पदेन)**	
1.	सदस्य (पदेन)	सूचना और प्रसारण मंत्री, भारत सरकार
2.	सदस्य (पदेन)	स्वास्थ्य एवं परिवार कल्याण मंत्री, भारत सरकार
3.	सदस्य (पदेन)	युवा कार्य और खेल मंत्री, भारत सरकार
4.	सदस्य (पदेन)	सामाजिक न्याय एवं अधिकारिता मंत्री, भारत सरकार
5.	सदस्य (पदेन)	महिला और बाल विकास मंत्री, भारत सरकार
6.	सदस्य (पदेन)	ग्रामीण विकास मंत्री, भारत सरकार
7.	सदस्य (पदेन)	पंचायती राज मंत्री, भारत सरकार
8.	सदस्य (पदेन)	अल्पसंख्यक कार्य मंत्री, भारत सरकार
9.	सदस्य (पदेन)	जनजातीय कार्य मंत्री, भारत सरकार
10.	सदस्य (पदेन)	सचिव, स्कूल शिक्षा और साक्षरता विभाग, भारत सरकार
11.	सदस्य (पदेन)	अध्यक्ष, विश्वविद्यालय अनुदान आयोग (यूजीसी)
12.	सदस्य (पदेन)	सदस्य (शिक्षा), योजना आयोग
13.	सदस्य (पदेन)	महानिदेशक, भारतीय कृषि अनुसंधान परिषद्
14.	सदस्य (पदेन)	अपर सचिव, सर्व शिक्षा अभियान, स्कूल शिक्षा और साक्षरता विभाग
15.	सदस्य (पदेन)	संयुक्त सचिव एवं वित्तीय सलाहकार, मानव संसाधन विकास मंत्रालय
16.	सदस्य (पदेन)	महानिदेशक, वैज्ञानिक तथा औद्योगिक अनुसंधान परिषद्
17.	सदस्य सचिव (पदेन)	संयुक्त सचिव (प्रौढ़ शिक्षा) एवं महानिदेशक (राष्ट्रीय साक्षरता मिशन प्राधिकरण)
घ.	**नामित सदस्य**	**शिक्षा शास्त्री वैज्ञानिक मीडिया विशेषज्ञ आदि में से चयनित प्रतिनिधि**
18.	सदस्य	श्री आर. रामा दोरई
19.	सदस्य	प्रो॰ एस. परशुरामन, निदेशक, टाटा सामाजिक विज्ञान संस्थान, मुंबई
20.	सदस्य	प्रो॰ नयन तारा, आईआईएम, बंगलौर
21.	सदस्य	प्रो॰ आर॰ गोविंद, कुलपति, एनयूईपीए
22.	सदस्य	श्री जावेद अख्तर
23.	सदस्य	प्रो॰ अनीता रामपाल
ङ.	**नामित सदस्य**	**स्वैच्छिक संगठनों का प्रतिनिधित्व करने हेतु 6 व्यक्ति**
24.	सदस्य	श्री कृष्ण कुमार, भारत ज्ञान विज्ञान समिति
25.	सदस्य	सुश्री अरुणा रॉय, सीईओ, प्रेमजी फाउंडेशन
26.	सदस्य	श्रीमती मालिनी घोष, निरंतर
27.	सदस्य	श्री पलोद रवि, एमएलए, तिरुवनंतपुरम
28.	सदस्य	सुश्री राधा कान्तिपुडी, सीईओ, तारा कलैक्टिव हैदराबाद
29.	सदस्य	श्री आमोद के॰ कंठ, प्रयास, नई दिल्ली
च.	**नामित सदस्य**	
30.	-वही-	मुख्य राष्ट्रीय राजनैतिक पार्टियों के वरिष्ठ
35.		स्तरीय प्रमुख-6 (राजनैतिक पार्टियों द्वारा मनोनीत
छ.	**सदस्य**	**संसद के तीन सदस्य (संसदीय कार्य विभाग द्वारा नामांकित 2 लोक सभा से तथा 1 राज्य सभा से)**
36.	-वही-	लोक सभा से 2 संसद सदस्य (संसदीय कार्य
37.		विभाग द्वारा नामांकित)
38.	-वही-	राज्य सभा से 1 संसद सदस्य (संसदीय कार्य विभाग द्वारा नामांकित)
ज.	**सदस्य**	**राज्य सरकार/संघ शासित प्रदेश से प्रौढ़ शिक्षा हेतु उत्तरदायी 6 मंत्री (बारी-बारी से नामांकित)**
39.	-वही-	अरुणाचल प्रदेश
40.	-वही-	आंध्र प्रदेश
41.	-वही-	हरियाणा
42.	-वही-	मध्य प्रदेश
43.	-वही-	झारखण्ड

44.	–वही–	राजस्थान
झ.	**सदस्य**	**एकीकृत निकायों के प्रतिनिधि (6)**
45.	–वही–	महानिदेशक, भारतीय वाणिज्य एवं उद्योग मंडल परिसंघ (फिक्की) (एफआईसीसीआई), नई दिल्ली
46.	–वही–	भारतीय उद्योग महासंघ (सीआईआई), नई दिल्ली
47.	–वही–	सार्वजनिक उद्यम संबंधी स्थायी समिति (एससीओपीई), नई दिल्ली
48.	–वही–	यूनेस्को में देश के प्रतिनिधि, नई दिल्ली
49.	–वही–	यूनीसेफ में देश के प्रतिनिधि, नई दिल्ली
50.	–वही–	यूएनडीपी में देश के प्रतिनिधि, नई दिल्ली

2. राष्ट्रीय साक्षरता मिशन प्राधिकरण परिषद् के गैर–सरकारी सदस्य भारत सरकार के नियमों के अनुसार यात्रा और दैनिक भत्ते के हकदार होंगे।

3. परिषद् का कार्यकाल अधिसूचना की तिथि से दो वर्ष की अवधि के लिए होगा।

[सं॰ एफ॰46–3/2008/एई–4/एनएलएम–4]

जगमोहन सिंह राजू, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of School Education and Literacy)

(NLM-IV SECTION)

New Delhi, the 24th December, 2013

S.O. 153.—On expiry of the term of the Council of the National Literacy Mission Authority (NLMA) constituted *vide* Government of India's Notification No. F.46-3/2008-AE-4/NLM-4 dated 07-07-2010 and its extended term till 31.03.2013 and in exercise of powers delegated in para 4 of Government of India Resolution No. F.9-5/87-AE-I dated 20.6.1988 (modified further vide Resolution No. F 14-9/1992-AE-I dated 25.9.1992 and F.9-18/94-AE.I dated 13-12-1994), it has been decided to reconstitute the Council with the following members:

S.No.	Category	Composition
A.	**Chairman, ex-officio**	**Minister of Human Resource Development, Government of India**
B.	**Vice-Chairman, ex-officio**	**Minister of State, Ministry of Human Resource Development, Government of India**
C.	**Members (Ex-Officio)**	
1.	Member (Ex-Officio)	Minister of Information and Broadcasting, Government of India
2.	Member (Ex-Officio)	Minister of Health and Family Welfare, Government of India
3.	Member (Ex-Officio)	Minister of Youth Affairs and Sports, Government of India
4.	Member (Ex-Officio)	Minister of Social Justice and Empowerment, Government of India
5.	Member (Ex-Officio)	Minister of Women and Child Development, Government of India
6.	Member (Ex-Officio)	Minister of Rural Development, Government of India
7.	Member (Ex-Officio)	Minister of Panchayati Raj, Government of India
8.	Member (Ex-Officio)	Minister of Minority Affairs, Government of India
9.	Member (Ex-Officio)	Minister of Tribal Affairs, Government of India
10.	Member (Ex-Officio)	Secretary, Department of School Education & Literacy, Government of India
11.	Member (Ex-Officio)	Chairman, University Grants Commission (UGC)
12.	Member (Ex-Officio)	Member (Education), Planning Commission
13.	Member (Ex-Officio)	Director General, Indian Council of Agricultural Research
14.	Member (Ex-Officio)	Additional Secretary, Sarv Shiksha Abhiyan, Department of School Education and Literacy
15.	Member (Ex-Officio)	Joint Secretary & Financial Advisor, Ministry of Human Resource Development
16.	Member (Ex-Officio)	Director General, Council of Scientific and Industrial Research
17.	Member Secretary (Ex-Officio)	Joint Secretary (Adult Education) and Director General, National Literacy Mission Authority
D.	**Nominated Members**	**Representative from amongst Educationists, Scientists, Media Experts etc.**
18.	Member	Shri R. Rama Dorai
19.	Member	Prof. S. Parasuraman, Director, Tata Institute of Social Sciences, Mumbai
20.	Member	Prof. Nayan Tara, IIM, Bangalore
21.	Member	Prof. R. Govinda, Vice-Chancellor, NUEPA

22.	Member	Shri Javed Akhtar
23.	Member	Prof. Anita Rampal
E	**Nominated Members**	**Six person to represent voluntary organizations**
24.	Member	Shri Krishna Kumar, Bharat Gyan Vigyan Samiti
25.	Member	Ms. Aruna Roy, CEO, Premji Foundation
26.	Member	Smt. Malini Ghosh, NIRANTAR
27.	Member	Shri Palode Ravi, MLA, Thiruvananthapuram
28.	Member	Ms Radha Kantipudi, CEO, Tara Collective, Hyderabad
29.	Member	Shri Amod K. Kanth, Prayas, New Delhi
F	**Nominated Members**	
30-35	-do-	Senior Level Leaders of the main National political Parties-6 (to be nominated by political parties)
G	**Members**	**Three Members of Parliament (Two from Lok Sabha & one from Rajya Sabha to be nominated by Department of Parliamentary Affairs)**
36-37	-do-	Two MPs from Lok Sabha (to be nominated by Department of Parliamentary Affairs)
38.	-do-	One MP from Rajya Sabha (to be nominated by Department of Parliamentary Affairs)
H	**Members**	**Six Minister responsible for Adult Education From State Government/ Union Territories (to be nominated on rotational basis)**
39.	-do-	Arunachal Pradesh
40.	-do-	Andhra Pradesh
41.	-do-	Haryana
42.	-do-	Madhya Pradesh
43.	-do-	Jharkhand
44.	-do-	Rajasthan
I.	**Members**	**Representatives of Integrated Bodies (6)**
45.	-do-	Director General, Federation of Indian Chambers of Commerce & Industries (FICCI), New Delhi
46.	-do-	Confederation of Indian Industries (CII), New Delhi
47.	-do-	Standing Committee on Public Enterprises (SCOPE), New Delhi.
48.	-do-	Country Representative of UNESCO, New Delhi.
49.	-do-	Country Representative of UNICEF, New Delhi
50.	-do-	Country Representative of UNDP, New Delhi

2. The Non-official members of the Council of the National Literacy Mission Authority will be entitled to traveling and daily allowance as per the Govt. of India Rules

3. The term of the Council will be for a period of two years from the date of Notification.

[No. F. 46-3/2008/AE-4/NLM-4]
JAGMOHAN SINGH RAJU, Jt. Secy.

उपभोक्ता मामले खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 154.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो नियम एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के संशोधन का विवरण नीचे अनुसूची में दिया गया है, वह स्थापित हो गए हैं:

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन संख्या और वर्ष	संशोधन लागू होने की तिथि
1	2	3	4
1.	आई एस 3041 : 1994 पिसी हुई चबाने वाली तम्बाकू – विशिष्ट (दूसरा पुनरीक्षण)	संशोधन संख्या 1 वर्ष 2013	30 सितम्बर 2013
2.	आई एस 3508 : 1966 घी (बटर फेट) में नमूना लेने और परीक्षण की पद्धतियां	संशोधन संख्या 3 वर्ष 2013	30 सितम्बर 2013
3.	आई एस 6969 : 1973 प्रशीतित पीने के पानी की प्रहस्तन एवं बिक्री की स्वच्छ स्थितियों का कोड	संशोधन संख्या 2 वर्ष 2013	30 सितम्बर 2013
4.	आई एस 4627 : 1968 निर्जलाकृत गोभी – विशिष्ट	संशोधन संख्या 3 वर्ष 2013	31 अक्तूबर 2013
5.	आई एस 7482 : 1989 प्रोटीन आधारित पेया – विशिष्ट (पहला पुनरीक्षण)	संशोधन संख्या 2 वर्ष 2013	31 अक्तूबर 2013

1	2	3	4
6.	आई एस 9304 : 1979 आम के भण्डारण के लिए मार्गदर्शिका	संशोधन संख्या 1 वर्ष 2013	31 अक्तूबर 2013

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफ़र मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चेन्नई, मुंबई, चंडीगढ़ तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोची में बिक्री हेतु उपलब्ध हैं।

[सन्दर्भ एफएडी/जी-128]
कुमार अनिल, वैज्ञानिक 'एफ' एवं प्रमुख
(खाद्य एवं कृषि विभाग)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 31st December, 2013

S.O. 154.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of Bureau of Indian Standards rules, 1987, the Bureau of Indian Standrads hereby notifies that the amendment to the Indian Standards, particulars of which are given in the Scheduled hereto annexed have been established on the date indicated against it:

SCHEDULE

Sl.	No. & year of the Indian Standard	No. & Year of the Amendment	Date on which the Amendment shall have effect
1.	IS 3041: 1994 Minced type chewing tobacco - Specification (Second Revision)	Amendment No. 1 Year 2013	30 September 2013
2.	IS 3508: 1996 Methods of sampling and test for ghee (Butterfat)	Amendment No. 3 Year 2013	30 September 2013
3.	IS 6969: 1973 Code for hygienic conditions for handing and sale of refregerated drinking `water	Amendment No. 2 Year 2013	30 September 2013
4.	IS 4627: 1968 Specification for dehydrated cabbage	Amendment No. 3 Year 2013	30 September 2013
5.	IS 7842: 1989 Protein-based beverages-Specification (First Revision)	Amendment No. 2 Year 2013	30 September 2013
6.	IS 9304: 1979 Guide for storage of mangoes	Amendment No. 1 Year 2013	30 September 2013

Copies of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhawan, 9 Bhandur Shah Zafar Marg, New Delhi - 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahemdabad, Bangalore, Bhopal, Bhubhneshwar, Coimbatore, Guwahati, hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. FAD/G-128]
KUMAR ANIL, Scientist 'F' and Head
(Food & Agri)

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 155.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है, वे स्थापित हो गए हैं:—

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापना की तिथि
1.	आई एस 16069 (Part 1) : 2013/आई एस ओ 21527-1: 2008 खाद्य एवं पशु आहार सामग्रियों का सूक्ष्म जैवविज्ञान -खमीर एवं फफूंदी कि गणना की क्षैतिज पद्धति - भाग 1 0.95 से अधिक जल गतिविधि वाले उत्पादों में कॉलोनी गणना तकनीक	आई एस 14920: 2001	30 जून 2013
2.	आई एस 6840: 2013 - कृषि पहिएदार ट्रैक्टर के एहतियाती रखरखाव - रीति संहिता (पहला पुनरीक्षण)	आई एस 6840 1972	31अगस्त 2013
3.	आई एस 9253 : 2013 - कृषि कार्य हेतु पहिए वाला ट्रैक्टर - खेत में कार्य संपादन और कर्षण (ढुलाई) परीक्षण- मार्गदर्शिका (तीसरा पुनरीक्षण)	आई एस 9523: 2001	31अगस्त 2013
4.	आई एस 16116: 2013 नारियल दूध का पाउडर - विशिष्ट	-	31 अक्तूबर 2013
5.	आई एस 16117: 2013 चिलगोजा गिरी - विशिष्ट	-	31 अक्तूबर 2013

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चेन्नई, मुंबई, चंडीगढ़ तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, कोयम्बतूर, गोवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोची में बिक्री हेतु उपलब्ध हैं।

[सन्दर्भ एफएडी/जी-128]
कुमार अनिल,वैज्ञानिक 'एफ' एवं प्रमुख
(खाद्य एवं कृषि विभाग)

New Delhi, the 31st December, 2013

S.O. 155.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of Bureau of Indian Standards rules, 1987, the Bureau of Indian Standrads hereby notifies that the Indian Standards, particulars of which are given in the Scheduled hereto annexed have been established on the date indicated against these:

SCHEDULE

Sl. No.	No. & year of the Indian Standard(s) Established	No. & Year of Indian Standards, if any Superseded by the New Indian Standard	Date of Establishment
1.	IS 16069 (Part 1) 2013/ ISO 21527-1: 2008 Micro-biology of food and animal feeding Stuffs — Horizontal method for the enumeration of yearts and moulds, Part 1 Colony count technique in products with water activity greater than 0.95	IS 14920 : 2001	30 June 2013
2.	IS 6840: 2013 Preventive Maintenance of Agricultural Wheeled Tractors — Code of Practice (First Revision)	IS 6840 : 1972	31 August 2013
3.	IS 9253: 2013 Agricultural Wheeled Tractors — Field Performance and Haulage tests — Guidelines (Third Revision)	IS 9253: 2001	31 August 2013
4.	IS 16116: 2013 Coconut milk power — Specification	-	31 October 2013
5.	IS 16117: 2013 chilgoza nuts — Specification	-	31 October 2013

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhawan, 9 Bhandur Shah Zafar Marg, New Delhi - 110002 and Regional Offices: New Delhi, the Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahemdabad, Bangalore, Bhopal, Bhubhneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. FAD-128]

KUMAR ANIL, Scientist 'F' and Head
(Food & Agri.)

कोयला मंत्रालय

आदेश

नई दिल्ली, 6 जनवरी, 2014

का॰आ॰ 156.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 03 सितम्बर, 2013 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का॰आ॰ संख्यांक 2665(अ), तारीख 02 सितम्बर, 2013 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगनों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार का यह समाधान हो गया है कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), निबंधनों और शर्तों का अनुपालन करने के लिए रजामंद है, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित भूमि और उक्त भूमि में या उस परके सभी अधिकार तारीख 03 सितम्बर, 2013 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्–

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

2. शर्त (1) के अधीन सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील आदि सभी विधिक कार्यवाहियों का बाबत् उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्ही कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि को और उसमें निहित उक्त भूमि में या उस पर के अधिकारों को और किसी अन्य व्यक्ति के अधिकारों को अंतरित करने की शक्ति नहीं होगी; और

5. सरकारी कंपनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा॰ सं॰ 43015/11/2011–पीआरआईडब्ल्यू–1]

एम॰ के॰ शर्मा, निदेशक

MINISTRY OF COAL

ORDER

New Delhi, the 6th January, 2014

S.O. 156.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 2665(E), dated the 2nd September, 2013, published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 3rd September, 2013, issued under sub-section (1) of section 9 of the Coal Beaning Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas the Central Government is satisfied that the Western Coalifields Limited, Nagpur (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section11 of the said Act, the Central Government hereby directs that the said land and all rights in or over the said land so vested shall, with effect from 3rd September, 2013, instead of continuing to so vest in the Central Governent, vest in the Government company, subject to the following terms and conditions, namely:—

1. the Government company shall reimburse the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

2. a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with rights, in or over the said land, so vested, shall also be borne by the Government company;

3. the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

4. the Government company shall have no power to transfer the said land and the rights in or over the said land to any other person without the prior approval of the Central Government; and

5. the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as the when necessary.

[F. No. 43015/11/2011-PRIW-I]

M. K. SHARMA, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 26 दिसंबर, 2013

का॰आ॰ 157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, व्हीकल फैक्ट्री के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या-सी.जी.आई.टी./एल.सी./आर/195/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-14011/19/1998-आईआर (डी.यू.)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 26th December, 2013

S.O. 157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/195/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The General Manager, Vehicle Factory and their workman which was received by the Central Government on 26-12-2013.

[F. No. L-14011/19/1998-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/195/99
PRESIDING OFFICER: SHRI R.B.PATLE

General Secretary,
Vehicle Factory Pratiraksha Mazdoor Sangh,
Q.No. 2491, Type-2,
Sector-1, Vehicle Factory Estate,
Jabalpur ..Workman/Union

Versus

General Manager, Vehicle Factory,
Jabalpur (MP) ..Management

AWARD

(Passed on this 18th day of June 2013)

As per letter dated 6-5-99 by the Government of India, Ministry of labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14011/19/98/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Vehicle Factory, Jabalpur in imposing the penalty of stoppage of one increment without conducting any enquiry on Shri S.K. Sengupta H.S.Grade-2 *vide* their order no. 99/viz/20255 dated 23-9-95 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party Union submitted statement of claim at Page 4/1 to 4/5. The case of 1st party workman is that workman was active member of Union. He was also General Secretary of the Union. He was working as Millwright in Vehicle Factory, Jabalpur. Mr. A.B. Ghosh was Asstt. Foreman, M.M. Section, Vehicle Factory, Jabalpur. That on complaint of A.B. Ghosh, charge sheet was issued to Shri S.K. Sengupta on 24- 12-92. The charges against workman were of abusing and using indescent language to his superior. The enquiry was conducted under Rule 14 of CCS Rule, 1965. Astt. Works Manager was Enquiry Officer. All the 5 witnesses did not support the department. The Enquiry Officer submitted report that charge was not established. Despite of it, General Manager imposed punishment regarding dessent in finding. Punishment of reduction in pay in one stage is imposed. The Union submits that the punishment is illegal. It is imposed in colourable exercise of power regarding dessent in finding. The Disciplinary Authority was pre-determined to impose the punishment. The penalty amount to double jeopardie. On such ground, it is prayed that the punishment of reducing salary be set-aside.

3. Management filed Written Statement at Page 6/1 to 6/2. It is submitted by management of IInd party that Shri S.K. Sengupta was working as Millwright in MM Section of Vehicle Factory. On 1-12-92, he loudly shouted in presence of staff members. That the existing procedure of taking attendance and search of I.E's after lunch recess. That chargesheet issued to Mr. Sengupta as per Rule-14 of CCS Rule 1965 Mr. Sengupta denied charges. The enquiry was initiated against him. The Enquiry Report was received by General Manager. Considering representation by the workman and findings of Enquiry officer, the punishment of reduction in pay by one stage was imposed on 21-2-95. Instead of preferring appeal, the workman approached ALC for conciliation. The said approach itself is sufficient to decide reference in favour of the management. The reference was made. The punishment was properly imposed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Vehicle Factory, Jabalpur in imposing the penalty of stoppage of one increment without conducting any enquiry on Shri S.K. Sengupta H.S. Grade-2 *vide* their order no. 99/viz/20255 dated 23-9-95 is legal and justified	In Affirmative
(ii)	If so, to what relief the workman is entitled to?"	Relief prayed by workman are rejected.

REASONS

5. The Union is challenging order of punishment of reduction of ipay of workman Shri Sengupta. The Union had not filed evidence. The evidence of workman was closed as per order dated 17-9-09. The management filed affidavit of evidence of Shri S.K. Mishra, The witness of management has stated about the chargesheet issued to the workman and enquiry conducted against him. That the charges against workman were proved. The evidence of management's witness remained unchallenged as the workman failed to cross-examine the said witness. The IInd witness Anuj Kishore Prasad filed affidavit of his evidence. He has also stated that workman Shri S.K. Sengupta had committed gross misconduct shouting and using un-parliamentary language in Plant-1,MM Section. The enquiry was conducted and charges were proved. The appeal was rejected. The evidence of IInd witness of management also remained unchallenged. The workman failed to cross-examine both the witnesses. Though the evidence of workman was closed as stated above, he has filed his affidavit of evidence on 30-3-2011 without applying for recalling the order of closing his evidence on 17-9-2009. The workman did not remained available for cross-examination. As the exparte order against workman is not called back, his evidence cannot be considered. The evidence of both witnesses of management remained unchallenged. Thus the evidence on record cannot establish that punishment of reduction of pay by one stage to workman suffers from illegality. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:—

1. The action of the management of Vehicle Factory, Jabalpur in imposing the penalty of stoppage of one

increment without conducting any enquiry on Shri S.K. Sengupta H.S.Grade-2 *vide* their order no. 99/viz/20255, dated 23-9-95 is legal.

2. Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 158.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांतोंमेंट एग्जीक्यूटिव आफिसर, महु के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (सदंभ संख्या सी.जी.आई.टी./एल.सी./आर./44/06) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.12.2013 को प्राप्त हुआ था।

[फा. सं. एल-13012/01/2006-आईआर (डी.यू.)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 158.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/44/06) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Contonment Executive Officer, Mhow and their workman, which was received by the Central Government on 26-12-2013.

[F.No. L-13012/01/2006-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/44/06

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Pratap Singh,
S/o Shri Omkar Singh & 10 others,
R/o H.No. 93, Mehta Ki Chaal,
Mhow ..Workman

Versus

Cantonment Executive Officer,
Cantonment Board,
Mhow ..Management

AWARD

(Passed on this 07th day of June, 2013)

1. As per letter dated 31-07-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-13012/1/2006-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow (MP) in terminating the services of their workmen Shri Pratap Singh and 10 others as per Annexure w.e.f. November 2003 is legal and justified? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. 1st party employees submitted joint statement of claim list party employees submits that they were continuously working with IInd party for 5-9 years. To be precise, 1st party No.1 Pratap Singh was appointed in February 1999 as Helper to help the work of carpenter. Hukum Singh was appointed in April 1995 to help in Mason work, Santosh Kumar was appointed in March 1998 to help in mason work, Rakesh was appointed in July 1999 to help in electrical work, Shyamlal was appointed in April 1998 as helper in water supply, Dinesh Chandra was appointed in March 1998 to help in water supply work, Kamal Kumar was appointed in April 1994 to help in Mason work, Rajesh was appointed in April 1995 to help in water supply work, Radheshyam was appointed in July 1995 to help in electrical work, Jagdish was appointed in April 1996 to help in electrical work. They had continuously worked till October 2003. Their services were terminated in November 2003 without assigning any reasons. That their working was satisfactory. The termination of their services without holding any enquiry is against principles of natural justice. It amounts to illegal retrenchment. That IInd party did not served notice for termination of service, no retrenchment compensation was paid to them. Permission of appropriate Government was not obtained for their termination. The termination of their services is illegal. After conciliation proceeding, the dispute has been referred. That they are not in employment. Since their termination, they are not gainfully employed elsewhere. On such ground, they are praying for setting aside the order of termination and reinstatement with consequential benefits. The earlier statement of claim was submitted on behalf of all 11 employees contending same points. In addition, it was contented that the termination of services of 1st party workman is in violation of the provisions of I.D.Act. The termination of services of those employees is by way of victimization. It is unfair labour practice. All the 11 employees prayed for their reinstatement with consequential benefits.

3. The management of IInd party submitted Written Statement at Page 11/1 to 11/4. IInd party submits that there are rules for making any appointment in the Cantonment Board and appointments are made only as per rules and after following the due procedure. The applicants have never been issued call letter to attend an interview for selection in any of the post lying vacant. IInd party submits that the workers were engaged for carrying out casual nature of work like removal of encroachments for maintenance of PWD etc. These work are not permanent nature and the applicants were engaged as daily labourers to do the same. The engagement of daily labourers was on purely need basis. Their engagement came to end on end of the day. They are not entitled to protection under I.D.Act. The employees had choice to work elsewhere. Their discontinuation doesnot amount to termination from service. The employees are not covered under Section 2(s) of I.D. Act.

4. IInd party further submits that applicant No. 1 to 10 were never appointed on the post of coolie and no appointment letter were issued to them. They were engaged on need basis for some casual nature of work. All the 10 employees were engaged on daily wage basis. The allegation of 1st party that their services are terminated in violation of principles of natural justice are denied. It is denied that they are terminated by way of victimization: It is reiterated that all the 10 employees were engaged for casual work and their services came to an end after end of day. IInd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow (MP) in termination the services of their workmen Shri Pratap Singh and 10 others as per Annexure w.e.f. November 2003 is legal and justified?	In Negative
(ii)	If so, to what relief the workman is entitled to?"	1st party workmen are entitled to reliefs as per final order.

REASONS

6. The dispute under reference relates to legality of termination of 1st party employees. The reference is made with respect to termination of services of Pratap Singh and 10 others. The 1st statement of claim filed by 1st party is on behalf of Pratap and 10 others where as the statement of claim filed in English is only on behalf of 10 employees.

7. IInd statement of claim submitted in English doesnot find signature of Shri Rakesh,S/o Babulal Malviya. 1st party employees prays that they were continuously working since initial appointment in different work till their services were terminated in November 2003. Management contends that these employees were not appointed as coolie. They were engaged for casual work. However Written Statement filed by management doesnot find clear pleadings that the employees had completed 240 days continuous service. The details of the working days of 1st party employees are also not pleading in Written Statement filed by management.

8. Affidavits of evidence filed by workmen Santosh Kumar, S/o Suresh Chandra, Jagdish, S/o Motilal Verma, Hukum Singh, S/o Kishan, Radhesham S/o Harlal, Dineshchandra, S/o Rameshchandra, Radhesham, S/o Mangilal, Pratap Singh, S/o Omkarsingh, Kamal Kumar, S/o Shri Harishchandra Yadav, Rakesh, S/o Babulal Malviya. Affidavit filed by all those 9 employees are identical about the period of their engagement that they were continuously working as coolie till 31-10-2003. They had completed 240 days continuous service during each of the year. Their services were terminated without enquiry, without issuing notice or payment of retrenchment compensation etc.

9. Santosh Kumar, S/o Suresh Chandra in his cross-examination says that his education is upto 8th standard. He was not called for interview, he was helping in work of mason. He claims ignorance about the vacant post. He has stated that he had worked for more than 240 days during 1998 to 2003. His evidence about work for more than 240 days is not shattered. Jagdish Motilal Verma in his cross-examination says that he was not given appointment letter, he had issued copy of muster roll, he says that he had worked for more than 240 days during every year. His evidence about doing work for more than 240 days every year is not shattered. Similarly evidence of Hukum Singh, S/o Kishan, Radhesham S/o Harlal, Dineshchandra, S/o Rameshchandra, Radhesham,S/o Mangilal, Pratap Singh, S/o Omkarsingh, Kamal Kumar, S/o Shri Harishchandra Yadav, Rakesh, S/o Babulal Malviya that they have worked more than 240 days during each of the year is not shattered during cross-examination. All those employees have not stated that in cross-examination that they were workman, they have received copy of muster roll. Letters received from the Cantonment Officer are produced at Exhibit P-4 to P-11. The working days of those employees are shown in the annexure along with those letters Exhibit P-4 to P-11. The working days for the months November to December 2002 are not shown. However the working days in the annexures are shown 239, 257, 233, 211, 235, 238, 236 & 239 in the year 2003. The services of all those employees were terminated from 1-11-03. The period of proceeding 12 months comes upto November 2002. If the working days of the month November to December 2002 shown in the Annexure submitted in P-4 to P-11 are considered, all of the

employees have completed 240 days service during 12 calendar months preceding termination of their services.

10. The management has also produced copies of muster rolls with list at Page 15/1, document M-1 to M-21. The working days shown of all the employees more than 240 days during the year 2002-03. However counsel for 1st party denied those documents without considering its contents. Therefore it is not appropriate to consider those documents. As per evidence of witness Pramod Prasad, the document Exhibit P-2, P-3 the extracts of outward register are proved. The letters sent as per entry No. 1433 & 1434 were sent from the office of IInd party. The evidence of this witness in cross-examination shows that the witness has no knowledge about the documents sent alongwith those letters. That the letter sent through office bears signature of the concerned officer. He has admitted in his evidence that the annexure sent alongwith the letters also used to be signed by the concerned officer. The officers sending letters Exhibit P-4 to P-11 are not examined by the IInd party. Those letters were sent by the Cantonment Officer is best person to explain whether the Annexures sent with those letters were correct or incorrect. The letters Exhibit P-4 to P-11 finds clear reference that the annexures were being sent for the period 1996 to 2003. As the IInd party management has not adduced evidence in rebuttal, I donot find any reason to disbelieve evidence of the applicants. The documents P-4 to .P-11 and the annexures sent alongwith those letters certainly corroborates evidence of the applicant that they were continuously working with the Management of IInd party from 1996 to 2003 and they had completed 240 days continuous service. The management of IInd party filed affidavit of evidence of Prashant chouhan, S/o Prahlad Das Chouhan. The said witness has stated in his affidavit that the employees were engaged for casual work of removal of encroachments for maintenance of PWD office. The names of employees were not sponsored through Employment Exchange. That the employees not worked for more than 240 days during any of the year. The witness is working as junior clerk. That Pramod Kumar was working as inward, outward clerk. N.F.Hussain was Chief Officer of the Cantonment Board. In his cross- examination, contents of document Exhibit P-1, P-4 to P-11 are confirmed. In his further cross-examination, this witness says that the employees were not paid retrenchment compensation, that the copy of muster roll for November-02 to October 03 will be available in the office. He has shown his willingness to produce those documents. That he has not produced any document about the engagement in any other work after termination of their services.

11. From evidence described above, it is clear that all the employees have completed 240 days continuous service preceding their termination from November 2003. They were not paid retrenchment compensation, no notice was issued to them.

12. Learned counsel for IInd party Mr. P.C.Chandak during course of argument submitted that the annexure with document Exhibit P-4 to P-11 are not bearing the signatures. As discussed above, the IInd party has not examined the competent officer who issued letter P-4 to P-11. No evidence in rebuttal is adduced. Therefore the argument advanced on above points cannot be accepted. If the working days for November December 2002 of all the employees shown in the annexure are considered, it is clear that all employees have completed 240 days continuous service. Their services are terminated without notice, no retrenchment compensation was paid, the termination of services of 1st party employees is in violation of Section 25-F of I.D.Act.

13. Considering the pleadings in Written Statement of IInd party that the 1st party employees were not given appointment letters, they were not appointed following the rules for appointment, requires time to emphasize that 1st party employees are not entitled for reinstatement. As discussed above, the services of 1st party employees are terminated in violation of Section 25-F of I.D.Act.

14. It is beneficial to consider ratio in

"case of Shri Ramesh Kumar versus State of Haryana reported in 2010-2 Supreme Court Cases 543. Their Lordship dealing with applicability of Section 25-F to casual employees and validity of termination. In case of termination of casual employee what is required to be seen is whether he has completed 240 days of service in preceding 12 months or not. If he has then the service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F . Though appointment on Public post cannot made in contravention of recruitment rules and constitutional scheme of employment, contention that initial appointment of appellant was contrary to recruitment rules and constitutional scheme of employment was not raised either before Labour Court or High Court . Moreover appellant had not prayed for regularisation but only for reinstatement with continuity of service to which he is legally entitled. In addition to factual conclusion by Labour Copurt that appellant had worked the required 240 days, appellant also shows that persons similarly situated had been reinstated and regularized. Hence the Labour Court's direction for reinstatement with continuity of service upheld, but with concession of workman to forego back wages."

Ratio held in above case squarely covers claim of• 1st party. Employees terminated in November 2003 without compliance of Section 25-F of I.D.Act . The action of the management is illegal and therefore I record my finding in Point No.1 in Negative.

15. Point No.2- In view of my finding in Point No.1 that the termination of 1st party employees is in violation of Section 25-F of I.D.Act, the employees were not gainfully employed,. The Termination of services needs to be set-aside. The employees deserves to be reinstated with 50 % back wages. Accordingly I record my finding on Point No.2.

16. In the result, award is passed as under:—

"1. The action of the management of Cantonment Executive Officer, Cantonment Board, Mhow (MP) in termination the services of their workmen Shri Pratap Singh and 10 others w.e.f. November 2003 is illegal.

2. IInd party is directed to reinstate 1st party employees with 50% back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 159.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, फार्म मशीनरी ट्रेनिंग एंड टेस्टिंग इंस्टिट्यूट सेहोरे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (सदंर्भ संख्या) सी.जी.आई.टी./एल.सी./आर./155/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.12.2013 को प्राप्त हुआ था।

[फा. सं. एल-42012/58/1996-आईआर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 159.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/155/97) of the Central Government Industrial Tribunal cum Labour Court, JABALPUR as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Director, Farm Machinery Training and Testing Institute, Sehore, which was received by the Central Government on 26-12-2013.

[F. No. L-42012/58/1996-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/155/97

PRESIDING OFFICER: SHRI R. B. PATLE

Smt.Ummi Bai,
S/o late Amir Khan,
Behind Rly.Station,
Godi Mohalla, Budni,
Sehore (MP) ..Workman

Versus

The Director,
Central Farm Machinery Training &
Testing Institute,
Tractor Nagar, PO Budni,
Distt. Sehore ..Management

AWARD

(Passed on this 13th day of June 2013)

As per letter dated 30-5-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-42012/58/96-1R(DU) . The dispute under reference relates to:

> "Whether the action of the management of Central Farm Machinery Training and Testing Institute, Budni in terminating the services of Smt. Ummi Bai, W/o Late Amir Khan is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 5/1 to 5/2. The case of the 1st party workman is that she was employed by IInd party on daily wages as casual labour in 1977. She continuously rendered services till year 1994. Her services were abruptly terminated. She had worked for more than 240 days during each 12 months preceding her termination. Her services were terminated illegally. The management had adopted pick and choose policy. Services of 24 employees were regularized. Out of them Gulab, Shivlal and Narmada Prasad were of more than 70 years of age. Hiralal, Ashok Kumar, Suresh were junior to the workman. Her services were deliberately discontinued to accommodate those workmen. There was no justification to discontinue her services. That her services are terminated without notice in violation of Section 25-F, G & H of I.D.Act. The workman prays for her reinstatement with consequential benefits.

3. IInd party failed to appear even after notices issued repeatedly. IInd party failed to submit Written Statement.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Central Farm Machinery Training and	In Negative

	Testing Institute, Budni in terminating . the services of Smt. Ummi Bai, W/o Late Amir Khan is legal.	
(ii)	If so, to what relief the workman is entitled to?"	As per final order.

REASONS

5. 1st party workman is challenging her termination. It is submitted that she was working on daily wages as casual labour from 1977 to 1994. Her services were terminated without notice, juniors were regularized, other employees more than 70 years were regularized to accommodate those persons. Her services were illegally terminated. The management has not filed Written Statement. 1st party workman filed her affidavit at Page 8/1 to 8/2. She has stated most of the facts stated in her Statement of claim that she had completed 240 days continuous service preceding her termination no notice was issued to her. Other junior employees are regularized namely Gulab, Shivlal , Narmada Prasad, Hiralal, Ashok Kumar and Suresh. The evidence of the workman remained unchallenged. IInd iparty not participated in the reference. From evidence on record, the termination of services of 1st party workman is proved illegal. For above reasons, I record my finding in Point No. 1 in Negative.

6. Point No.2- In view of my finding on Point No.1, the termination of services of 1st party workman is illegal. It is in violation of Section 25-F, G of I.D. Act. the workman was working on daily wages as casual labour in 1994. Her affidavit of evidence shows her age 55 years in 2007. The workman must have completed 60 years age in the year 2012. She was not in employment since 1994 therefore the relief of reinstatement cannot be allowed. Reasonable compensation would be proper. Considering the length of service rendered by 1st party workman, compensation of Rs. I Lakh would be proper. The workman had completed 17 years service. The workman is entitled to retrenchment compensation 15 days for each year of her completed service. Thus she is entitled to retrenchment compensation for 8 months 15 days and notice pay one month. Thus the workman is entitled to total wages of 9 months 15 days. The rate of wages is not stated in her statement of claim. Therefore the amount needs to be paid @ last wages paid to them.

7. In the result, award is passed as under:—

(i) Termination of services of 1st party workman Smt. Ummi Bai, wife of Late Amir Khan by the management of Central Farm Machinery Training and Testing Institute, Budni is illegal.

(ii) IInd party is directed to pay compensation Rs. 1 Lakh, notice pay for one months wages, retrenchment compensation for 8 months 15 days at the rate of wages last paid to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार चीफ जनरल मेनेजर, डिपार्टमेंट ऑफ़ टेलिकॉम भोपाल एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/88/2001) को प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40012/33/2001-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 160.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/88/2001) of the Central Government Industrial Tribunal cum Labour Court Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. of Telecommunication, Bhopal & others and their workman, which was received by the Central Government on 26-12-2013.

[F. No. L-40012/33/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/88/2001
Presiding Officer: SHRI R.B. PATLE

Shri Jai Prakash Bharati,
R/o Village Manda,
Post Rasda,
Tehsil Rasda,
Distt. Balia .....Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road
M.P. Circle,
Bhopal (MP)

The General Manager,
Telecom, CTO Building,
T.T.Nagar,
Bhopal (MP) ...Management

AWAR D

(Passed on this 26th day of June 2013)

As per letter dated 27-4-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/33/2001/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Chief General Manager Telecom, Bhopal in terminating the services of Shri Jaiprakash Bharati S/o Shri Shiv Muniram w.e.f. March 1992 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/1 to 2/12. The case of Ist party workman is that he was employed in Railway Electrification Project, Telecom deptt. as casual labour from 1-1-86 to December 92. He had received letter dated 9-9-92 and as he was engaged in Jan-86 he could not be retrenched. That he had submitted application dated 20-1-94. He further submits that several circulars for regularization granting temporary status to those employees were issued covering the employees working as casual labours upto 26-6-88. The said circular was in consonance to the directions issued by the Apex Court. That the services of Ist, party workman were discontinued from December 1992.

3. Ist party further submits that he had worked for 240 days during all the calendar years. His services were terminated without issuing notice or paying retrenchment, compensation. Retrenchment is in violation of Section 25-F of I.D. Act. The workman has also referred to ratio held in various cases by Apex Court and principles laid down about Casual labours and their regularization/absorption in service. That Section 25-F, N were violated and the workman was discriminated other employees were retained in service. That some employees had filed original application 411/90 before CAT, Jabalpur as per order dated 28-8-95 in case of Dhaniram Meena and others, other services were regularized. Workman further refers to the scheme for regularization of Telecom Department in 1989 is provided casual labours be granted temporary status regularization etc. considering other aspects including age relaxation etc. Such employees were to be absorbed in Grade D again. The details are also given with respect of temporary status who completed 240/206 days in an year, that engagement was to be on need basis. The workman submits that in case of Brij Kishore in W.P.No. 1041/88 principles laid down was all casual employees who had referred continuous service one year and who had been engaged for work for 240 days in calendar year were regularized. The ratio held in various cases were also referred by the workman and he submits that termination of services is in violation of Section 25-F of I.D. Act. He was denied regularization as per scheme. His services were illegally terminated including the cut off dated 22-6-88 instead of 30-3-85. Workman prays for setting aside termination order and he may be reinstated with full back wages.

4. IInd party filed reply at Page 15/1 to 15/3. IInd party submits that Railway Electrification project was short term project. It was temporary at short period. The office of director of Telecom Electrification has been closed. Other contentions of workman are denied. The documents produced by workman are contradictory as he claims to be suffering from illness. At next stage he claims to be still working. He further submits that workman was engaged purely on casual basis. Therefore his services could not be regularized. The circulars were issued by Non-applicant for regularization and award of temporary status to casual labours are not applicable in case of workman. IInd party denies that service of workman were abruptly discontinued from December. 90 in violation of Section 25-F of I.D. Act. According to IInd party provisions of I.D. Act is not applicable in the matter. It is submitted that in view of judgment in case of Secretary, State of Karnataka and others versus Uma Devi and others, workman is not entitled to regularization of the service as he was engaged on daily wages temporarily on contractual basis. He has no right to be absorbed.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Chief General Manager Telecom, Bhopal in terminating the services of Shri Jaiprakash Bharati S/o Shri Shiv Muniram w.e.f. March 1992 is legal?	In Negative
(ii)	If so, to what relief the workman is entitled to?"	As per final orders.

REASONS

6. Ist party workman is challenging legality of his termination from service. He submits that his services are terminated in violation of Section 25-F, N of I.D. Act. he was working with IInd party during 1-1-1986 to December 1992. He has continuously worked for 240 days during each of the year of his service. IInd party denied above

contentions of the workman. IInd party submits that workman was engaged as casual labor. He has not completed 240 days continuous service. He is not entitled to regularization. The contentions of the workman w.e.f. circulars issued for regularization of casual employees is in 1989. IInd party submits that those circulars are not applicable to present case. Workman has not completed 240 days continuous service. The parties are in dispute about termination of his service in December 1992. The document Exhibit W-1 produced by the workman shows that as he was engaged in January 1986 and was not working prior to 30-3-85, no permission can be granted to continue him on work. Said letter also finds reference of application submitted by workman dated 10-7-92. To be precise, document Exhibit W-1 doesnot clearly speak about termination of the service of the workman. It is reply to the letter dated 10-7-92 given by workman. Certain benefits claimed by him as per rules were denied. The Written Statement filed by IInd party is silent as to when services of Ist party workman were discontinued. Even it is not stated by witness of IInd party Shri Pandey as to when services of Ist party workman were discontinued. The argument advanced by the learned counsel for IInd party Mr. Kapoor that services of workman were discontinued prior to 10-7-92 finds no support from the affidavit of management's witness Shri Pandey. On the other hand, the workman in his affidavit of evidence has stated that his services were discontinued in December 1992. That he was working as casual labour with IInd party from Jan. 1986. In his cross-examination, he has stated that he was working with IInd party till December 1992. Evidence of workman on the above point is not shattered in cross-examination. Rather the point is not confirmed in his evidence in Para-15. The evidence of workman that his services were terminated in violation of Section 25-F is also not shattered. Any question is not asked to workman in his cross-examination, neither it is case of IInd party that provision of Section 25-F was complied, notice was issued or retrenchment compensation was paid to the workman.

7. Learned counsel for IInd party Mr. Kapoor submits that workman has not worked for 240 days. The documentary evidence is not produced. Burden lies on the workman is not discharged by him. The evidence requires to be tested by probability. That written Statement filed by IInd party and evidence of the management is silent that after 1-1-86, at any time services of workman were discontinued or any break was given. It presumes continuity of service and therefore I donot find reason to disbelieve the evidence of workman that he continuously worked as casual labour from 1-1-86 to December 1992.

8. The evidence of management witness Shri A.K. Balpandey is merely by way of denial that the workman was engaged purely on casual basis. He is not fit for regularisation in deptt. of BSNL as per scheme circulated. In his cross-examination, management's witness says from 1-9-92, he was working BSNL department, he doesnot know the workman. Workman was not appointed by him neither terminated by him. He was unable to tell whether order of termination was issued or not. He further says that when project is terminated, all the employees in such project are also terminated. He was unable to tell whether notice of termination was given or retrenchment compensation was paid to workman. That he has not produced any documents. That the workman had not worked for 240 days during any of the year. The witness says that attendance sheet or any record is not available. In absence of such record, how the evidence of witness that the workman had not worked for 240 days cannot be believed. It is a case of withholding the record about working days of workman. In his further crass-examination, management's witness says that Gafar Khan, Nagesh, Laddu, Ramnaresh, Dhaniram, Mangilal and Tarwat Singh were absorbed in the service he cannot say. Thus the management's witness has absolutely no knowledge about the affairs of the office and his evidence is not worth to place reliance.

9. Workman has produced documents. Document Exhibit W-2 about absorption of casual labours for 14117 posts. Para-2 of the guidelines relating to eligibility shows that full time casual labours who have put in a service of atleast 240 days per year in any two years prior to 31-3-87 were eligible for absorption. In document W-3, instruction were given for absorption of daily rated casual labours as per judgment by Supreme Court dated 27-10-87. Document Exhibit W-4 letter issued by Director, in para-2 finds cut off date for absorption is 22-6-88. The services of the 1st party are discontinued in December 1992. He was working with IInd party from 1-1-86. Thus it is clear that on 22-6-88, he was working on establishment of IInd party as casual employee.

10. Document Exhibit W-5 is judgment by Hon'ble CAT, Jabalpur in Original application 411/86. Para-7 refers to scheme for casual labours, . grant of temporary status. The Written Statement filed by IInd party is imagive merely saying that the circulars are not applicable. Cut off date was 22-6-88. Management of IInd party has absolutely not submitted any reason why benefit of regularization scheme was not given to the workman. The letter Exhibit W-1 shows that the workman was not in employment on 31-3-1985 and therefore as per rule he could not be retrenched. It is contrary to the cut off date 22-6-88 in document Exhibit W-4,5. Other employees were regularized as per judgment in Original application No. 411/86. The present workman was illegally denied benefit of regularization rather when he tried to claim the benefit as per letter dated 10-7-92, he was denied benefit. Therefore the act of management is apparently illegal. Provisions of 25-F were not complied while terminating workman from service.

11. Learned counsel for management relies on ratio held in case of Bharat Sanchar Nigam Limited, Jammu versus

Teja Singh reported in Civil Appeal No. 292 of 2009 referring ratio held in case of State of Karnataka and Others Versus Umadevi & Others, it was observed that deem it proper to clarify that the comments and observations should be read as obiter and the same should neither be treated as binding by the High Courts.

The facts of present case are not comparable as the scheme for regularization of casual labours was framed by the department in pursuance of directions of Hon'ble Apex Court. The workman is entitled to benefits of the scheme for regularization 1989. It was illegally denied to the workman.

12. For the same reasons, ratio held in

> "Case of Krishna Bahadur versus Purna Theatre and others reported in 2004(8) Supreme Court Cases-229 cannot be applied to case at hand. The ratio held in above cited case deals with the waver of statutory rights. In present case, it is no body's case that the workman has waved his statutory right. Para-12 of the judgment refers to provisions of Section 25-F has been held to be mandatory before retrenchment of workman. There is no evidence about its compliance by IInd party."

13. Learned counsel for IInd party relies on ratio held in case of State of M.P Versus Bhairav Prasad Mishra reported in

> "2009(1)M.P.H.T.73(CG). Their Lordship dealing with benefit of Section 25-F of I.D. Act observed services of respondent workman was discontinued by oral order. Labour court holding that he had worked for 3 months from Ist April to 30th June in every calendar year and for more than 240 days during the entire period from 1981 to 1988 gave him benefit of Section 25-F of Industrial disputes Act. Their Lordship held workman should have worked for not less than 240 days in the preceding year and not by taking into consideration his entire service to entitle him to benefit of Section 25-F of I.D. Act, directing reinstatement of the respondent with full back wages giving him benefit of Section 25-F of I.D. Act."

Terms of reference shows that the services of workman were terminated in March 1993. The learned counsel Mr. Kapoor submits that the Period of 12 months is calculated from March 93 — 240 days continuous working cannot be established. The pleadings in Written Statement filed by IInd party, nothing is pleaded when services of workman were terminated. On the other hand, workman has pleaded in Statement of claim that his services were discontinued from December 1992. It is not specifically denied. Thus the evidence of workman that his services were discontinued from December 92 is also not shattered in his cross-examination. Though the terms of reference shows that the termination of services of workman was from March 92, evidence on record shows that his services were discontinued from December 92. There is no evidence that prior to his discontinuation of service, workman was given any kind of break or his services were discontinued prior to his termination of service in December 1992. The evidence discussed is cogent that he was working for 240 days during each of the year and therefore the ratio held in above case cannot be applied to the present case at hand.

14. From above reasons, it is clear that instead of regularizing services of workman as per the scheme of 1989, his services were terminated in violation of Section 25-F of I.D. Act is illegal. Therefore I record my finding on Point No.1 in Negative.

15. Point No. 2-As to point No. 2, in my finding in Point No.1 that termination of services of workman is illegal, question arises as to what relief workman is entitled? Workman is out of employment from December 1992. There is no evidence that he is in gainful employment. The evidence of management's witness are silent on above point. The evidence of workman is also silent about survival and what he is doing all those years. An able body person cannot be supposed to remain idle for such a long period of time. Keeping above aspects in view, it would be appropriate to reinstate workman allowing benefit of regularisation as per scheme of 1989 and back wages 25% to meet the ends of justice. According I hold.

16. In the result, award is passed as under:—

1. Action of the management of Chief General Manager Telecom, Bhopal in terminating the services of Shri Jaiprakash Bharati S/o Shri Shiv Muniram w.e.f. March 1992 is legal.
2. Mangement is directed to reinstate workman and regularize him in service as per Regularisation Scheme 1989 with 25% back wages.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार टेलीकॉम डिसटिक मैनेजर, सागर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/16/2003) को प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40012/92/2002-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 161.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/16/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Telecom District Manager, Sagar and their workman, which was received by the Central Government on 26-12-2013.

[F. No. L-40012/92/2002-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/16/2003
Presiding Officer: SHRI R.B. PATLE

Shri Raju Prasad Tiwari,
S/o Shri Rameshwar Prasad Tiwari,
C/o Shri Ram Kumar Purohit,
Behind Punjab Bank, Shastri Ward,
Bina, Sagar (MP) ....Workman

Versus

The Telecom District Manager,
Sagar (MP) ....Management

AWARD

(Passed on this 26th day of June 2013)

1. As per letter dated 6-8/1/2003 by the Government of India, Ministry. of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/92/2002- IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Telecom District Manager, Sagar (MP), Deptt of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Raju Prasad Tiwari S/o Shri Rameshwar Prasad Tiwari w.e.f. 30-12-87 (Dec. 87) and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed his statement of claim at Page 6/1 to 6/4. Workman submits that he was working as casual labour from 1-3-87 for the work of store drump and dismentalling of Telephone Lines along Rail and a certificate was issued by the Asstt. Manager, Telecom Rail Electrification Project, Sagar. That he had completed 294 days service. His services were terminated without complying provisions of I.D. Act. His repeated representations were not considered. The IInd party was claiming that it is not covered as an Industry. IInd party adopts policy of use and throw. The other persons appointed before 1988 were regularized. His services are illegally terminated. The workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 5/1 to 5/3. IInd party denies all contentions of the workman. It is submitted that workman was not engaged by the department. He had not worked for 240 days in the department. It is submitted that casual labours are granted temporary status as per Regularisation Scheme 1989. Prior to 30-3-1985, continuing as casual workers on 7-11-89 and who have completed 240 days in a year are treated as casual labours. That applicant was not working as per requirement of the scheme. He was not engaged between 31-3-85 to 22-6-88. He was not engaged as casual labours. Therefore there was no question of compliance of Section 25-F,G,H of I.D. Act. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

"(i)	Whether the action of the management of Telecom District Manager, Sagar (MP), Deptt of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Raju Prasad Tiwari S/o Shri Rameshwar Prasad Tiwari w.e.f. 30-12-87 and not regularizing him in service is legal?	Action of the management is not proved illegal.
(ii)	If so, to what relief the workman is entitled to?	Relief prayed by workman is rejected."

REASONS

5. Workman challenging termination from service in violation of Section 25-F of I.D. Act filed affidavit of his evidence at page 8. However he failed to make available for cross-examination. Management filed affidavit of witness Shri R.G. Gohe. The workman failed to cross-examine him. Thus the workman has not participated in reference proceeding. He has not make available for this cross-examination. Therefore his evidence cannot be relied upon. The evidence of management's witness remained unchallenged. I find no reason to disbelieve the evidence of management's witness. Workman has failed to prove his contention. Therefore, I record my finding that the action of the management is not proved illegal.

6. In the result, award is passed as under:—

1. The action of the management of Telecom District Manager, Sagar (MP), Deptt of Telecom now converted into Telecom District Manager, Sagar (MP), Bharat Sanchar Nigam Limited in terminating the services of Shri Raju Prasad Tiwari S/o Shri Rameshwar Prasad Tiwari w.e.f. 30-12-87 is not proved illegal.

2. Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार ऑफिसर-इन-चार्ज मिलिट्री डेरी फार्म, महु के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/193/97) को प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-14012/04/1997-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/193/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Officer-in-charge, Military Dairy Farm, Mhow and their workman, which was received by the Central Government on 26-12-2013

[F. No. L-14012/04/1997-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/193/97
PRESIDING OFFICER: SHRI R.B. PATLE

Shri Kanhaiyalal,
S/o Shri Balli, Chowkidar,
Military Farm. Mhow,
Distt. Indore (MP) ....Workman

Versus

Officer Incharge,
Military Farm, Mhow,
Distt. Indore (MP) ....Management

AWARD

Passed on this 15th day of May 2013

1. As per letter dated 9-7-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14012/4/97-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Military Farm in terminating the services of Shri Kanhaiyalal S/o Shri Balli w.e.f. 1-6-96 is correct and justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim on 25-9-98. The case of 1st party workman is that he was working as temporary chowkidar with IInd party management No. 3 since 1990. His services were terminated from 1-6-96 by oral order. He has submitted application before ALC(C) Bhopal. The conciliation proceedings failed. The reference are made by Government. It is further submitted that termination of his service by oral order is illegal. That the person who completed 240 days service would be made regular. However the services were terminated without any notice. Other persons completing 240 days were regularized. He prays for his reinstatement with regularity of services.

3. IInd party management submitted Written Statement at Page 6/1 to 6/4. It is submitted that the IInd party is part of Military Farm. IInd party is discharging sovereign functions of the State. It is not an industry as held in the case of Bangalore Water Supply. The vacancies are reporting to the Local Employment Exchange. List of eligible candidate is called. After interview, by the Committee, suitability of candidates is tested and the appointment orders used to be issued to the successful candidates. That no such procedure was followed while engaging Ist party workman. That no back door entry could be allowed. The services of Ist party workman cannot be regularized. Several unemployed are in search of employment. It is further submitted that the Ist party workman was engaged as seasonal chowkidar in Grassbir. After handing over the grassbir to contractor for harvesting, work was not available. The workman was offered alternative job at Mhow but he refused to join at said place. IInd party management prays for rejection of the claim.

4. Ist party workman filed rejoinder at Page 8/1 to 8/2. It is reiterated that he had completed 240 days continuous service. Said fact was admitted by IInd party before ALC(C), Bhopal. Workman also prays for calling attendance register known as R-17 and wages book. He submits that 11 out of 20 applicants were regularized from 15-1-96.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

"(i) Whether the action of the management of Military Farm in terminating the services of Shri Kanhaiyalal S/o Shri Balli w.e.f. 1-6-96 is correct and justified?	In affirmative
(ii) If so, to what relief the workman is entitled to?"	Relief prayed by workman are rejected.

REASONS

6. That Ist party workman is challenging legality of termination of his services. That he had completed 240 days continuous service. His services are terminated without notice. He failed to adduce evidence and ex parte order is passed on 5-6-08. Management filed affidavit of evidence of its witness Shri Phagan Dass, S/o Shri Harichand. Management's witness in his affidavit of evidence has stated that the IInd party Dairy Farm is commanded by a Farm Officer of the Indian Army who is designated as Officer Incharge of the establishment of Defence Forces to defend the territories of the country from external aggregation is a primary and enable function of a constitutional Government. The Military Farm is responsible for supply of milk required for various units. As per recruitment policy in the IInd party, it is necessary to call names of the suitable candidates from employment Exchange. After conducting interview, the successful candidates are again subjected to medical examination and then suitable candidates are appointed. Such procedure was not followed while engaging workman. He was temporarily engaged as per exigency of work. He has not completed 240 days in the preceding year. The workman was engaged as seasonal chowkidar in Grassbir. After handing over grass to contractor, there was no need to keep chowkidar. Ist party workman was also offered relevant employment at Military Farm Mhow. However applicant refused to go to Indore. The evidence of the witness of IInd party remained unchallenged. So far as contentions of IInd party that IInd party discharging sovereign functions of Govt. cannot be accepted as Dairy Farm whether Ist party workman was engaged cannot be said sovereign function. However as the evidence on other points of management's witness remained unchallenged, Ist party has failed to adduce evidence to substantiate his contentions. The action of the IInd party management terminating services of Ist party workman cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:-

(1) Action of the IInd party management in terminating the services of Shri Kanhaiyalal S/o Shri Balli w.e.f. 1-6-96 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार चीफ जनरल मेनेजर, डिपार्टमेंट ऑफ़ टेलिकॉम भोपाल एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/96/2000) को प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40012/78/2000-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 163.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/96/2000) of the Central Government Industrial Tribunal cum Labour Court Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. Of Telecommunication, Bhopal & others and their workman, which was received by the Central Government on 26-12-2013.

[F. No. L-40012/78/2000-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/96/2000
PRESIDING OFFICER: SHRI R.B. PATLE

Shri Lukman Khan,
S/o Shri Nashir Khan,
R/o Moh.' Balbatpura,
Nr. Dargah,
Tahsil Narsinghgarh,
Distt. Rajgarh ....Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
MP Circle, Bhopal (MP)
Telecom Distt. Engineer,
Rajgarh At Biaora,
Rajgarh (MP) ....Management

AWARD

(Passed on this 24th day of June 2013)

1. As per letter dated 31-5-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-40012/78/2000/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Lukman Khan S/o Nasir Khan w.e.f. December 96 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notice was issued to the parties. 1st party workman submitted his statement of claim at Page 2/1 to 2/4. The case of workman is that he was initially appointed in 1992 in Telecom Department as casual labour at Narsinghgarh, Distt. Rajgarh. Thereafter he worked at different places with seniority and honesty. He continued to Work in November 1996 without break. He was appointed on permanent vacant post of labour. He had completed more than 240 days continuous service in each of the calendar year, was entitled to be regularized as permanent employee. That his service was dismissed without following statutory provisions, without assigning any reasons. The action of IInd party management is arbitrary and against principles of natural justice.

3. Workman further submits that he was posted at Narsinghgarh Sub-Division. He was assigned duties of maintaining the trunk line, testing and recording the register and battery register are available with the applicant. That he was engaged for work of permanent nature. That terminating his service without assigning reasons is an act of Victimisation. He is entitled for reinstatement with back wages.

4. It is further submitted that he was not issued showcause notice, provisions of Section 25 of I.D. Act were not followed. Any enquiry not conducted against him. Termination of his service amounts to illegal retrenchment. On such grounds, he prays for his reinstatement with consequential benefits.

5. Management filed Written Statement at Page 4/1 to 4/2 signed by counsel for the management. It is not signed by any officer of IInd party. IInd party pleaded that the workman was never engaged by it. The claim of workman for regularization is baseless and privolous. That no violation of I.D. Act was committed by IInd party. Workman was engaged as casual labour for specific work. As the specific work was finished, his work was automatically discontinued. There is no question of giving one month's notice or payment of retrenchment compensation. Workman never completed 240 days continuous service preceding the termination. IInd party prayed for rejection of claim of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

"(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Lukman Khan S/o Nasir Khan w.e.f. December 96 is legal?	In Negative
(ii) If so, to what relief the workman is entitled to?"	As per final order

REASONS

7. Workman is challenging termination of service by IInd party. The claim of Ist party workman is denied by IInd party by filing reply. Written Statement signed by management's counsel. The reply filed by management cannot be said legal pleading as it doesnot bear signature of any responsible officer of the lInd party. Workman filed affidavit of his evidence stating that he was engaged by IInd party as casual labour in 1992 and discontinued from December 1996. That he had completed 240 days continuous service, he was not given notice pay, not given retrenchment compensation. Provisions of Section 25-F of I.D. Act are violated. Termination of his service is illegal. In his cross-examination, workman says that he has no knowledge about advertisement being published at the time of his appointment. He claims ignorance whether his name was sponsored through Employment Exchange. He did not remember whether he had submitted application for appointment to the officer of IInd party. That oral interview was taken by Junior Engineer Shrivastava. He was required to do the work of installing telephone box, laying of the telephone cables, opening exchange for installing telephone connection of customers. That the work done by him were of technical nature. He had received training. He was doing all the work by getting experience and learning from the seniors. That he had worked during 1987 to 1989, 1992 to 1996. He worked at Shajapur, Narsinghgarh. He was working under one Mr. Nasir Babu during the period June 1995 to December 1995. That he was provided spade and ropes for his work. He was paid wages as per muster roll for working days. At fag end of his cross-examination, he says that he was engaged for special skill. He denied suggestion that he had not completed 240 days working. Those suggestions was given to the workman that he was engaged for special work. Any document about such scheme are not produced. There are no clear feelings about such claim in reply filed by management. The management filed affidavit of its witness Ramjani Khan. His affidavit of evidence also doesnot show the details of special work in which the workman was

engaged. Management's witness has stated that workman was engaged as casual labour by management for specific work. His services were automatically discontinued. The details of the specific work is not given in his application.

8. Workman had filed application Pg.7 of record for production of documents, attendance register, muster roll, Kachha muster roll of a Deora, Rajgarh where workman worked in 1992 to 1996. IInd party has replied at Page 13 and contented that no attendance register is maintained by the management of IInd party. Where such documents are not maintained by management, the workman cannot be accepted to produce such documentary evidence to substantiate his claim. Therefore I do not find reason to disbelieve the evidence of workman that he was continuously working with management of IInd party from1992 to 1996. The services of workman are discontinued without issuing notice, or paying retrenchment compensation. Provisions of Section 25 of I.D. Act are violative by management. Therefore action of the management is illegal. For above reasons my finding in Point No.1 is in Negative.

9. **Point No. 2**—As to Point No. 2, in view of my finding in Point No.1, discontinuance of service of workman is in violation of Section 25 of I.D. Act. Question arises to what relief the workman is entitled. The evidence on record doesnot show that any advertisement was issued and name was sponsored through Employment Exchange. The workman was engaged as casual labour, he was working for short period from 92 to 96 about 5 years. The reinstatement of workman would not be justified as he is out of employment for long period of more than 17 years. The compensation of Rs. 1 Lakh would be appropriate with one Months notice pay and retrenchment 2 months 15 days (15 days each of 5 years service).

10. Accordingly the award is passed as under:—

1. Action of the management of Chief General Manager, Telecom in terminating the services of Shri Lukman Khan S/o Nasir Khan w.e.f. December 96 is illegal.

2. IInd party is directed to pay compensation of Rs.1 Lakh, one month's notice pay and one month, 15 day retrenchment compensation at the rate of last wages paid to the workman.

The amount as per above order shall be paid within 30 days from the date of award. In default, the said amount shall carry interest @ 9% per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 164.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिन्दुस्तान फोटो फिल्म्स विनिर्माण सह लिमिटेड के प्रबंधतंत्र के संबंद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्ष्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 35/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/239/2010-आईआर (डी॰यू॰)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.35/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Photo Films Manufacturing Co. Ltd. and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-42012/239/2010-IR(DU))

P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT CHENNAI

Thursday, the 2l[st] November, 2013

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 35/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Hindustan Photo Films Manufacturing Co. Ltd. and their workman)

BETWEEN

Sri M. Ramakrishnan	:	1st Party/Petitioner
AND		
The Senior Manager Hindustan Photo Films Manufacturing Co Ltd., Indu Nagar, Udhaga-mandalam, Nilgiris-643005	:	2nd Party/Respondent

Appearance:

For the 1st Party/ Petitioner	:	Sri R. Sampath Kumar, Advocate
For the 2nd Party/ Management	:	M/s Aiyar & Dolia, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No.L-42012/239/2010-IR (DU) dated 15.04.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Hindustan Photo Films Co. Ltd., Udhagamandalam in terminating the services of Sri M. Ramakrishnan, a workman w.e.f. 30.01.2001 is legal and justified? What relief the workman is entitled to?"

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 35/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner are these :

The petitioner had joined the service of Hindustan Photo Films Ltd. in the year 1978. From 1989 he was working as Operator in Conversion Department. He was also an active Trade Union leader and was dedicated to the welfare of the employees. One Bellie working as Security Guard in the Hindustan Photo Films Ltd. was bedridden since January 1999. He had authorized the petitioner to process his medical claims and to receive the amounts on his behalf from the company. Every bills of Mr. Bellie were accompanied by authorization letters attended to by the petitioner without any fault since January 1999. Amounts were also handed over to Bellie either by the petitioner in person or through the relatives of Bellie who were working in the Company. On 25.08.2000 the 2nd Respondent suspended the petitioner from service on the allegation that the petitioner had fraudulently fabricated seven letters of authorization by forging the signatures of Bellie to claim the amount due on medical bills, obtained the amounts and misappropriated the same. The petitioner approached the Hon'ble High Court of Madras against the Suspension Order. The High Court directed the Respondents to frame charges, appoint enquiry officers and pass orders on merit in accordance with the principles of natural justice. However the 2nd Respondent ordered enquiry without framing any fresh charge, on the basis of the earlier Charge Memo which was not served on the petitioner and constituted an enquiry committee. Though the petitioner objected to the constitution of the enquiry committee and requested to reconstitute the same, this was not allowed. The committee conducted an enquiry and gave a finding that the petitioner is guilty of the charges framed against him. On the basis of the findings the 2nd Respondent sent a Show Cause Notice. The petitioner had given an explanation to the notice. However, the 2nd Respondent concurred with the findings of the enquiry committee, found the petitioner guilty and dismissed him from service by order dated 30.01.2001. The petitioner filed Writ Petition before the Hon'ble High Court for quashing the dismissal order. The petitioner later withdrew the Writ Petition with liberty to raise an Industrial Dispute before the Labour Court. It is accordingly the dispute was raised. The enquiry was conducted against the petitioner in violation of the principles of natural justice. The findings of the enquiry is a perverse one. The petitioner was victimized by the Respondents. The petitioner is entitled to an order of reinstatement in service with full back wages and other consequential reliefs.

4. The Respondents have filed Counter Statement contending as below :

The petitioner has raised the dispute before the Conciliation Officer only 9 years after the dismissal. For this reason itself the petitioner is not entitled to any relief. During August 2000, the Respondent Company had received a complaint from Bellie, an employee of the company that during August 1999 he had handed over medical bills to the petitioner on the basis of the assurance given by him that he would get payment from the Company, but he had not received any amount. Bellie had informed that he had not received medical reimbursement claims from September 1999 to February, 2000 and that he had not given any authorization letters to the petitioner to get reimbursement of medical expenses. The records of the company show that the petitioner had received medical reimbursement claims on the strength of authorization forms purported to have been issued by Belli. The petitioner was suspended from service on 25.08.2000. A Charge Memo was issued to the petitioner and an enquiry was conducted. Enquiry Officers found the petitioner guilty of the charges. The punishment of dismissal from service was imposed on the petitioner by order dated 30.01.2001. The petitioner had not raised any objection at the time of enquiry alleging violation of principles of natural justice. The averment that the enquiry was conducted in violation of principles of natural justice is not correct. So also the allegation that the finding of the enquiry committee is perverse is not correct. The petitioner is not entitled to any relief.

5. The evidence in the case consists of documents marked as Exs. W1 to Ex. W6 and Exs. M1 to Ex. 3. No oral evidence was adduced by either side.

6. The Points for consideration are :

(i) Whether the termination of the petitioner from the service of the Hindustan Photo Films Co. Ltd. is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. As could be seen from the Claim Statement itself the petitioner has raised a contention that the domestic enquiry against him was not conducted by the Respondents

in a fair and proper manner, that it was against the principles of natural justice and that the finding is perverse. This question has been considered as a preliminary point. By order dated 21.05.2012 my predecessor has entered a finding that the enquiry was conducted in a fair and proper manner.

8. In view of the above order probably, the parties have not chosen to adduce any oral evidence. They have produced documents pertaining to the enquiry. Both sides now largely rely upon the proceedings of the enquiry to put forth their respective cases.

9. The only question to be considered is whether the evidence tendered during the enquiry proceedings make out a case against the petitioner, whether he has actually manipulated authorization letters in the name of Bellie, obtained amount due to him by way of medical reimbursement and appropriated the same. It could be seen on going through the enquiry file that the management has examined three witnesses and the petitioner too has examined three witnesses including himself. In fact the proceedings against the petitioner was started on the basis of a letter that was written by Bellie to the Company complaining that he has not received the amount due to him by way of medical reimbursements though he has sent the bills to the Company through the petitioner who is a Union Leader. Bellie has stated in his letter dated 21.08.2000 that he had sent the medical bills to the petitioner earlier and that subsequently when he met the petitioner in person while he was in the vicinity of the company for taking X-ray he had agreed to reach the house with the amount but he has not complied with this promise. Bellie seems to have written to the Company consequently requesting the Company to pay the medical reimbursements to him. On the basis of the letter of Bellie the Respondents have made a preliminary enquiry by reaching the house of Bellie who was still bedridden. It was on the basis of the facts revealed by this Preliminary Enquiry that the petitioner was suspended from service. Though the petitioner had challenged the suspension order before the Hon'ble High Court, the High Court had disposed the Writ Petition with a direction that the enquiry against the petitioner should be conducted in a fair and proper manner.

10. The material evidence in the enquiry is that of Bellie, the employee who was allegedly cheated by the petitioner by refusing to pay the medical reimbursement claim made by him through the petitioner. During his examination in the enquiry proceedings Bellie has stated that he was bedridden, that he was undergoing treatment and had made a claim for medical reimbursement. He has stated that since he was bedridden he was not able to present the medical reimbursement bills personally and therefore he used to send his medical reimbursement claims through one Rajan of Electrical Department to be handed over to one Lingaraj who in turn was to hand it over to the petitioner for follow up action with the finance division of the Company. He had further stated that earlier to this arrangement he had personally handed over some of the medical claim bills to the petitioner. Before the enquiry committee seven authorization letters which were allegedly forged by the petitioner were produced. All these letters of authorization were put to Bellie during his examination. He has stated that except the authorization letter dated 22.09.1999, other authorization letters were not signed by him. Bellie has also deposed that when he had gone to the premises of his Company in November 1999 he had met the petitioner and enquired him about the status of the medical claim bills that have been given to him for follow-up. The petitioner had told him that all the bills were cleared by the Finance Division and that he would collect the money and hand it over to him the next day. The petitioner did not turn up at his residence on the next day. However, he had continued to send his medical claim bills through Rajan of Electrical Department who is his neighbour. Subsequently, he had asked Lingaraj, another worker to enquire with the petitioner about the position of his claim for medical reimbursement. It was when he did not receive the money that he had made the complaint with the Respondent. The Company had informed him that the medical reimbursement claims were disbursed on the basis of authorization letters given by him. The copies of these letters were also sent to Bellie. On verifying them he has returned Ex.M1 letter to the Respondent stating that he did not give any such authorization letters.

11. MW2 is the employee of the Respondent Company who has stated that except the authorization letter dated 22.09.1999 all other authorization letters referred to in the enquiry proceedings were processed by him. He has deposed that all these letters were brought to him by the petitioner. After processing, he had handed over these letters back to the petitioner for collecting the money referred to in the letters from the Cashier.

12. MW3 who is the Cashier has deposed that all the above authorization letters were handed over to him by the petitioner and that he has made payments to the petitioner on the basis of these letters.

13. It could be seen from the nature of evidence given by the petitioner in the enquiry proceedings that the petitioner himself has no case that he has not collected money on the basis of the authorization letters. His case seems to be that all the letters were signed by Bellie himself and that the money received by him from the Cashier on the basis of the letters were handed over to Bellie through others.

14. There is the specific evidence given by Bellie that none of the authorization letters other than the one dated 22.09.1999 contain his signature. When these letters were again put to him during his cross-examination he has categorically stated that these were not signed by him at all. Regarding the letter dated 22.09.1999, though in his

complaint to the Company he has referred to this also as forged, he has stated during his examination that this contains his signature. However, when it was again put to him during his cross-examination he has expressed doubt as to whether this is his signature itself. However, he had no such doubt about the signatures purportedly his in the other authorization letters. Except the interested version given by the petitioner himself, there is no other evidence to contradict this evidence given by Bellie. It is to be borne in mind that it was when he failed to get any information regarding the medical reimbursement claim put in through the petitioner that he has written to the Company asking to release the amount due to him. It was only thereafter it was noticed that the amounts were already disbursed on the basis of the authorization letters presented by the petitioner before MW2. Apparently, Bellie has received the amounts covered by his earlier claims. If not for the failure to receive the amount it is unlikely that he would have made such a complaint. The counsel for the petitioner had been referring to a single sentence in the evidence of Bellie that he had given bills and authorization earlier and he should naturally expect the money for his earlier bills. The counsel has argued on the basis of this that definitely authorization letters were given by Bellie and these are the letters that were presented by the petitioner before MW2. When the whole evidence of Bellie examined as MW1 is taken into account such an interpretation cannot be given to this version. It is apparent from the evidence of MW1 that even prior to the period of complaint he was entrusting bills with others and getting amount. So such an interpretation is not called for on the basis of this lone statement given by MW1.

15. Before the enquiry committee the petitioner has examined himself and two other witnesses to establish his case that he has been duly making payment to MW1 whatever amount that were received by him. The other two witnesses examined by him are his co-workers. DW1 in the enquiry proceedings, one of the co-workers has deposed that the petitioner used to give him closed covers to be handed to MW1, Bellie and that Bellie also used to give him closed covers to be handed over to the petitioner. He has stated that the petitioner and also Bellie had told him that the closed covers pertain to medical reimbursement claim of Bellie. He has stated that other than himself one Mr. Lingaraj, one Gokul and also the petitioner had been meeting Bellie in connection with the medical reimbursement claim. However, he does not know whether any of them had given any money to Bellie by way of medical reimbursement. During his cross-examination this witness has stated that he does not remember in which period the closed covers were handed over to Bellie. He then stated that he never cross-checked the contents of the closed covers and was never interested in doing this also.

16. DW2 is another co-worker who had deposed in favour of the petitioner in the enquiry proceedings. This witness has also deposed that Bellie used to hand over covers said to be containing medical reimbursement bills to be handed over to the petitioner or Mr. Lingaraj. The petitioner or Lingaraj used to hand over closed covers said to be containing medicines and those would be handed over to the petitioner. He further stated that so far as medical reimbursement money was concerned the petitioner or Lingaraj used to pay the amount to him and also asked him to count the money. He used to count it and then take the money to Bellie. He stated that on 3 or 4 occasions he had made payment to Bellie in this manner. According to him Bellie never used to give any acknowledgement regarding payment. He stated during his cross-examination that he does not remember the month or year during which money was paid. He then stated that the petitioner himself never paid any money to him directly. The practice was that the petitioner would pay money to Lingaraj or one Muthukrishnan who in turn would hand over the money to him to be handed over to Bellie.

17. It could be seen from the evidence of DW1 and DW2 that even assuming that any transaction has passed in between them and Bellie they are not very specific about the period. Again, there is no case for DW2 that the petitioner himself paid any money to him directly. Though such was the case in the Chief Examination, he has given a go-by to this during his cross-examination and has stated that the petitioner did not pay any money directly. Again, if payment by the petitioner through DW1 and DW2 both were towards medical claims of Bellie it is unlikely that he would have asked one of them only to count the money and send the money in closed cover through the other.

18. What the petitioner has stated during the examination of DW3 is that he has received amount from the Cashier. According to him the moment he received the money from the Cashier he used to hand over the same to Lingaraj. He further stated that on 5 or 6 occasions he himself handed over money personally to Bellie. He then stated that if he does not have time and does not find Lingaraj, he used to send money through other persons like Rajan, Giridharan, Sundaran, etc. He has stated during his cross-examination that he used to count the money in front of the concerned persons before he handed over the money to them in a cover. None of the witnesses including the petitioner has stated during which period money was handed over to the petitioner. Acknowledgement was never obtained also. So in any case there is nothing to show that the petitioner received the amount by way of medical reimbursement towards the periods complained above. In fact a perusal of the evidence of MW1 would show that there is no reason to doubt about the credibility of this witness. The circumstances under which the witness has decided to make a complaint with the Company also requires consideration in this respect. Alongwith this is the absence of any credible evidence on the side of the petitioner during the enquiry proceedings. There was every justification for the enquiry committee to enter a finding of guilt against the petitioner. The counsel for the Respondent has pointed

out that it is a case where the petitioner has raised a dispute with a delay of 9 years. Though this contention will not have any relevance in view of my findings that the finding of the enquiry committee has justification, the question still deserves consideration in view of the argument advanced by the counsel for the petitioner regarding proportionality in the punishment given. It is clear from the case of the petitioner that he has been fighting the case before the High Court before he withdrew the same and decided to raise an Industrial Dispute. So the delay in raising the claim shall not affect the petitioner.

19. Having found that the findings of the enquiry committee need not be interfered with, the question now to be considered is whether the punishment is not in proportion to the gravity of the offence. The counsel for the Respondent has referred to the decision DIVISIONAL MANAGER, RAJASTHAN SRTC VS. KAMRUDDIN reported in AIR 2009 SCC 2528 to support his argument that this Tribunal need not interfere with punishment imposed. The above was a case where a bus conductor was found to be carrying passengers without ticket. Penalty of termination of services was imposed by the appointing authority. Interference of this punishment by the Labour Court was set aside by the Apex Court

20. The above was a case where concerned worker was continuously misappropriating money belonging to the State by carrying passengers without ticket. In the present case the petitioner has attained superannuation during the enquiry proceedings. There is no allegation of any malpractice by him earlier. When this aspect is taken into account I am of the opinion that dismissal from service which is the severe most punishment should not have been imposed on him. Justice would have been meted out if the punishment of Compulsory Retirement was imposed. I am inclined to alter the punishment of the petitioner to one of Compulsory Retirement from service.

21. Accordingly, the punishment imposed on the petitioner is altered to one of Compulsory Retirement. The petitioner will be entitled to all the benefits to which he will be entitled on Retirement from service with effect from 30.01.2001.

22. The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	15.01.2001	Enquiry Report into the charges vide charge memo P1/4/2901 dated 30.08.2000 framed against the petitioner.
Ex.W2	24.08.2000	Letter of Second Respondent to Mr. S. Bellie.
Ex.W3	19.09.2000	Letter of Second Respondent to the petitioner.
Ex.W4	02.11.2000	Letter of petitioner to 2nd Respondent.
Ex.W5	06.11.2000	Letter of Second Respondent to petitioner.
Ex.W6	-	Charge Sheet alongwith FIR in Crime No. 169/2000 with statements recorded under 160(1) of Cr.P.C.

On the Management side :

Ex.No.	Date	Description
Ex. M1	24.08.2000	Letter from S. Bellie to Respondent.
Ex.M2	-	Letters of Authorization/payment order forms.
Ex.M3	-	Proceedings of Enquiry with attachements.

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय निदेशक, क्षेत्रीय श्रम संस्थान के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 82/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/290/2010-आईआर (डी॰यू॰]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Regional Director, Regional Labour Institute, Guindy. and their workman, which was received by the Central Government on 26/12/2013.

[F. No. L-42012/290/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 8th November, 2013

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 82/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Regional Labour Institute and their workmen]

BETWEEN

Sri D. Selvaraj	:	For the 1st Party/ Petitioner
AND		
The Regional Director Regional Labour Institute Guindy, Chennai	:	2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner	:	M/s M. Christopher, K.C. Karl Marx, Advocates
For the 2nd Party/Management	:	M/s. S. Siva Shanmugham, Advocate

AWARD

The Central Government, Ministry of Labour and Employment, vide its Order No. L-42012/290/2010-IR(DU) dated 05.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Regional Director, Regional Labour Institute, Chennai in terminating the services of Sri D. Selvaraj, Ex-Driver w.e.f. 16.03.1994 is legal and justified? What relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 82/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The case that is put forth in the Claim Statement is this:

The petitioner was called for interview for the post of Driver with the Respondent institution and was posted as Driver on temporary basis by order dated 23.07.1990. He had been in employment with the Respondent continuously from 24.07.1990 to 15.03.1994 except for the artificial break of three days on occasions. The petitioner had submitted representation to the Respondent to regularize his employment. Instead of regularizing him the Respondent had terminated the services of the petitioner. The petitioner had been working in a regular post with the respondent. He has been terminated from service without due process of law. The artificial break-ups in the service of the petitioner cannot be taken into consideration for computing the continuous service. The petitioner has worked for more than 480 days within 48 consecutive months. The Respondent did not give any reason for termination. Even assuming that the termination amounts to retrenchment the Respondent did not comply with Section-25F of the ID Act.

An order may be passed directing the Respondent to reinstate the petitioner in service with full back wages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The petition is not maintainable either in law or on facts. The Regional Labour Institute, Chennai is not an industrial establishment as defined in Section-2 of the Industrial Disputes Act. No industrial activity of any kind is undertaken in this institute. It is a centre for research, training and consultancy on the various aspects of industrial safety and health. In the Regional Labour Institute, there are two posts in the grade of Driver One of the two Drivers was under suspension. The petitioner was appointed as Driver on adhoc basis from 24.07.1990 through Employment Exchange against the vacancy caused due to suspension of the regular incumbent. Since the suspension of one of the Drivers continued the adhoc appointment of the petitioner continued with periodical breaks. The regular incumbent was exonerated by the Court and was reinstated. The service of the petitioner was terminated on 15.03.1994, prior to the reinstatement of the regular incumbent. Challenging the termination the petitioner had approached the Central Administrative Tribunal, Chennai. The Tribunal had directed the Respondent to give a speaking order giving reasons for the termination of the petitioner. As directed by the Tribunal the Respondent terminated the services of the petitioner by order dated 03.05.1994 giving reasons for termination. This order was challenged by the petitioner before the Tribunal. The Tribunal dismissed the petition. After this the petitioner had filed another petition before the Central Administrative Tribunal, against the Respondent to prevent it from calling candidates from the

Employment Exchange for filling up the vacancies to the post of Drivers and to direct the Respondent to appoint the petitioner for the post of Driver. This petition also was dismissed. He filed a writ Petition before the Hon'ble High Court of Madras challenging this order and this also was dismissed. It is after this he had filed a petition before the Assistant Labour Commissioner with a request for reinstatement with back wages and other' benefits. This too was decided against the petitioner. He again approached the Hon'ble High Court. As directed by the Hon'ble High Court, the Asstt Labour Commissioner conducted conciliation proceedings. On failure of conciliation the matter was referred to this Tribunal The appointments of the petitioner were for a specific period of four months only purely on adhoc basis and not on regular basis. He was never appointed continuously for more than 4 months. The petitioner is not entitled to any relief.

5. The evidence in the cases consists of the oral evidence of WW1 and MW1 and documentary evidence consisting of Ex. W1 to Ex. W50 and Ex. M1 to Ex. M8.

6. **The Points for consideration are :**

(i) Whether there was any justification in the termination of the services of the petitioner by the Respondent?

(ii) What is to the relief to which the petitioner is entitled?

The Points

7. It could be seen on going through the Claim Statement and the Counter Statement that the facts of the case are not much in dispute. Admittedly, the petitioner was appointed as Driver by order dated 23.07.1990 on the vacancy that has arisen consequent to the suspension of a regular employee. The petitioner has continued in service with the Respondent as Driver until 15.03.1994 on which date he was terminated from service. Within this period several appointment orders were given to the petitioner, all these appointments being for a period of 4 months. The case of the petitioner is that he was working continuously except for the artificial break-up of 3 days each in between these appointments. According to him his termination is not legal.

8. Before going into the main issue in the case it is necessary to consider the contention of the Respondent that the Regional Labour Institute is not an industrial establishment as defined under the Industrial Disputes Act and as such it does not come under the purview of the Industrial Disputes Act. According to the Respondent, the Regional Labour Institute is a Centre for Research, Training and Consultancy on various aspects of industrial safety and health catering to the needs of the Southern regional. According to the Respondent, no industrial activities are going on in the Institute. The activities are intended to improve work methods and working conditions so as to enhance the safety, health and productivity of industrial workers in general their quality of life, etc. The counsel for the petitioner has argued that even such establishments will come under the definition of the term industrial establishment as defined in the Industrial /Disputes Act and therefore it will come under the purview of the Act also. The Apex Court in the case of Ahmadnagar Textile Research Asscіation reported in 1960 2 LLJ 720 has held that the Research Association was establishment to carry on the research with respect to textile industry jointly for the benefits of its members by discovery of processes of manufacture with a view to secure greater efficiency, rationalization and reduction of post and therefore the activity done therein is an industry. Subsequently, the Apex Court has again held in the decision Bangalore Water Supply and Sewerage Board Vs. Rajappa reported in 1978 AIR SCC 548 that research institutes albeit run without profit motive are industries. This observation of the Apex Court still holds good. The Regional Labour Institute is an establishment of the kind referred to in the above decisions. So the activity going on in the Regional Labour Institute also will come under the definition of the term industry as defined in the Industrial Disputes Act and therefore any dispute arising between the Institute and the workers therein will be an Industrial Dispute coming under the purview of the Industrial Disputes Act. So the contention raised by the Respondent in this respect is only to be rejected.

9. Coming to the main issue now, the concerned Court had exonerated the regular employee from the charge against him and directed him to be reinstated in service. It was prior to his reinstatement the service of the petitioner has been terminated so as to give room for the reinstatement of the regular incumbent. Before approaching this Tribunal the petitioner had approached other forums including the Hon'ble High Court of Madras in his effort to continue in the service of the Respondent. Ext.M2 is the order of the Central Administrative Tribunal, Madras Bench in OA No. 412/94 directing the Respondent to dispose of the representation of the petitioner by a speaking order giving reasons for the termination. Ext.M3 is the order of termination giving reasons. The petitioner had again approached the Central Administrative Tribunal. Ex.M4 is the copy of the order in OA No. 542/1995 filed by him against his termination. The Administrative Tribunal has found that the order of termination has been issued out of necessity and that the petitioner's case could not be considered favourably in the absence of vacant post. Ex.M5 is the copy of the order in OA 1085/96 filed by the petitioner in his attempt to stall appointment of Drivers by the Respondent through Employment Exchange. This was also dismissed. He then approached the Hon'ble High Court for an order that he should be considered and appointed as Driver in the Office of Deputy Director, Inspector of Dock Safety, Madras. This petition was also dismissed with the observation that there is no vacancy for the post of Driver

in the Office of the respondent or the R3, the Inspectorate of Dock Safety and that if such vacancy should arise in future the case of the applicant may be considered having regard to the fact that he had worked for some years in the Office of the Respondent herein. Thus it could be seen that all the attempts made by the petitioner to continue in employment with the Respondent, though he was working on temporary basis, failed.

10. It could be seen from the admission made by the petitioner during his cross-examination that he was quite aware of the nature of his employment and was continuing in the service of the Respondent with this awareness. He has admitted during his cross-examination that he was appointed in the place of the regular Driver who was suspended from service. He has also admitted that he knew that he will not be permanently appointed. The orders of appointment including Ext.W8 show that the petitioner was appointed on ad-hoc basis. What the petitioner has stated in the Claim Statement as well in Proof Affidavit is that the break-up of his service are artificial. However, it could not have been so because each of his appointments was for a period of 4 months. Again it is to be noted that he was working in the vacancy that has arisen consequent to the suspension of the regular employee and he was bound to vacate the place in case the suspended person comes back. It could be seen from the Counter Statement that the petitioner was fortunate to continue with the service of the Respondent almost for a period of 4 years, though with several breaks, since the regular employee continued to be under suspension during this period. Only when the Respondent was forced to reinstate him in service, the service of the petitioner was terminated.

11. Is the petitioner entitled to reinstatement in service merely because he had worked with the Respondent for a fairly long period though on ad-hoc basis? The counsel for the petitioner has referred to the decision of the Apex Court in Surendra Kumar Verma Vs. Central Government Industrial Tribunal reported in the year 1981-SCC-422 in this respect. It was a case where a bank had terminated the services of certain employees on the ground that they could not pass the prescribed test for permanent absorption in service. The Labour Court had refused to reinstate them in service. The Apex Court has directed that they should be reinstated in service.

12. The facts of the above case referred to by the counsel for the petitioner are not in *parimateria* with the facts of the present case. Again, recently the Apex Court has held that in such cases reinstatement shall not be ordered as a matter of course and that in case there has not been compliance of Section-25F of the ID Act, compensation will be the suitable relief (2013 11 LLJ 141 SC).

13. There is the evidence of MW1 that at present there is only one post of Driver with the Respondent Institute, though earlier there were two and that this one post is now not vacant and so in any case there is no possibility of the petitioner being reinstated in service. Considering all these aspects I find that the petitioner is not entitled to the relief of reinstatement in service.

14. It is a fact that except for the periodical breaks, the petitioner has been continuously working with the Respondent for almost 4 years. He was in continuous service for more than 240 days in the preceding year of his termination. The petitioner has stated that his termination was not in compliance of Section-25F of the ID Act. There is no case for the Respondent also that at the time of termination the provision has been complied with. Therefore, the petitioner is entitled to compensation from the Respondent. The compensation payable is fixed as Rs. 1.00 lakh. The Respondent shall pay the petitioner the above compensation of Rs. 1.00 lakh within a month. In case of failure to pay the amount within the prescribed period it will carry interest at the rate of 6% per annum from the date of the order.

15. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th November, 2013)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union	:	WW1, Sri D. Selvaraj
For the 2nd Party/Management	:	MW1, Dr. R.K. Elangovan

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	30.04.1984	Office Order of the Inspectorate Dock Safety
Ex.W2	23.08.1984	Order of Director General Factory Advice Service and Labour Institute
Ex.W3	01.09.1984	Order of the respondent management to one Sri U. Sundaram
Ex.W4	22.11.1984	Memorandum of the respondent management issued to one Sri U. Sundaram
Ex.W5	23.01.1985	Office Order of the respondent issued to one Sri U. Sundaram
Ex.W6	05.07.1990	Letter of Respondent to the petitioner regarding call for interview

Ex.W7	23.07.1990	Memorandum of the respondent
Ex.W8	24.07.1990	Appointment order issued by the Respondent
Ex.W9	19.10.1990	Order of the Respondent Management
Ex.W10	26.10.1990	Order of the Respondent to pay usual allowance to the petitioner
Ex.W11	25.05.1992	Memorandum issued by the Directorate General Factory Advice Service and Labour Institute
Ex.W12	09.02.1993	Letter of the petitioner to the Directorate General Factory Advice Service and Labour Institute
Ex.W13	30.08.1993	Order of the Central Labour Institute, Bombay to the respondent regarding filling vacancy of Driver
Ex.W14	10.09.1993	Office memorandum issued by the Director, Department of Personnel and Training
Ex.W15	17.09.1993	Letter of the petitioner to respondent
Ex.W16	29.09.1993	Office Order of respondent to the petitioner
Ex.W17	12.11.1993	Order of respondent management
Ex.W18	16.11.1993	Order of respondent of residential accommodation to the petitioner
Ex.W19	22.11.1993	Memorandum of the respondent issued to petitioner to attend the duty at Inspectorate Dock Safety
Ex.W20	1991-1994	Monthly pay slip of the petitioner issued by the respondent
Ex.W21	09.03.1994	Petitioner representation to the respondent regarding Regularization
Ex.W22	10.03.1994	Termination order
Ex.W23	04.04.1994	Order copy in OA No. 412 of 1994
Ex.W24	25.04.1994	Memorandum of the respondent
Ex.W25	03.05.1994	Letter of respondent to the petitioner
Ex.W26	28.06.1994	Certificate of the respondent regarding service and conduct of the petitioner
Ex.W27	30.06.1994	Petitioner representation to the respondent regarding to consider in Group "D" post
Ex.W28	22.11.1994	Office order to the petitioner regarding to pay the overtime allowance
Ex.W29	16.12.1994	Reminder-II letter to the respondent to the petitioner regarding to collect the OTA amount
Ex.W30	27.03.1995	Memorandum of respondent regarding revised seniority list of staff car drivers
Ex.W31	27.06.1996	Order passed in OA No. 542 of 1995
Ex.W32	10.10.1996	Legal notice issued to the management
Ex.W33	29.01.1997	CAT review order in RA No. 80 of 1996 in OA No. 542 of 1995
Ex.W34	19.04.1999	CAT order in OA No. 1085 of 1996
Ex.W35	12.07.1999	Interim order in WMP 16574 of 1999 in WP No. 11718 of 1999
Ex.W36	04.09.2000	Office Memorandum of the Inspectorate Dock Safety
Ex.W37	11.09.2000	Order of the Inspectorate Dock Safety issued to on Employee
Ex.W37A	10.10.2000	Legal Notice
Ex.W38	28.06.2001	Order of Honourable Court in WP No. 11718 of 2009
Ex.W39	06.08.2001	Letter of the petitioner to the Hon'ble Prime Minister of India
Ex.W40	06.11.2000	Representation of petitioner to the Respondent
Ex.W41	12.12.2002	Letter of the petitioner to the respondent
Ex.W42	12.03.2004	Letter of the petitioner to the Hon'ble President
Ex.W43	16.03.2004	Letter from President's secretariat to Chief Secretary, Government of Tamil Nadu
Ex.W44	28.07.2004	Petition under Section-2A of ID Act
Ex.W45	08.07.2005	Letter of the Regional Labour Commissioner to the petitioner
Ex.W46	29.07.2005	Letter of the petitioner to the Regional Labour Commissioner

Ex.W47	29.07.2005	Order passed by the Regional Labour Commissioner
Ex.W48	-	Copy of the cover dated 03.08.2005
Ex.W49	-	Writ Petition filed by the petitioner in WP No. 3743 of 2007
Ex.W50	27.04.2010	Order of the Hon'ble High Court in WP No. 3743 of 2007

On the Management's side

Ex.No.	Date	Description
Ex. M 1	23.07.1990	Memorandum of appointment of the petitioner
Ex.M2	04.04.1994	Order made in OA No. 412 of 1994
Ex.M3	03.05.1994	Reply to petitioner's representation
Ex.M4	26.06.1996	Order in OA No. 542 of 1995 with petitioner respondent's letter
Ex. M5	19.04.1999	Order in OA No. 1085 of 1996
Ex.M6	28.06.2001	Order in WP No. 11718 of 1999
Ex.M7	29.05.2005	Rejection order passed by the Regional Labour Commissioner
Ex.M8	27.04.2010	Order made in WP No. 3743 of 2007.

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 166.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, दिल्ली नगर निगम के प्रबंधतंत्र के संबंद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰-1, के पंचाट (संदर्भ संख्या 194/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/136/2012-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.194/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, MCD and their workman, which was received by the Central Government on 26/12/2013.

[F. No. L-42012/136/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1 DELHI

I.D.No.194/2012
Sh.Sita Ram S/o Late Sh.Ramphal,
C/o Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi. ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110002. ...Management

AWARD

A safai karamchari working with Municipal Corporation of Delhi (in short the Corporation) expired on 09.01.1997. Her son, namely Shri Sita Ram, was engaged as safai karamchari for a period of 89 days, after her death. His engagement was further extended for another period of 89 days in the year 1997 itself. Thereafter, he was never engaged by the Corporation. In the year 2012, Shri Sita Ram approached the Nagar Nigam Karamchari Sangh (in short the union) with a request to espouse his case for his appointment in the service of the Corporation on compassionate grounds. The union raised an industrial dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L42012/136/2012-1R(DU) New Delhi dated 07.12.2012, with following terms:

> "Whether action of the management of Municipal Corporation of Delhi in not regularizing the services of Shri Sita Ram, S/o Shri Rampal, who worked as safai karamchari after due appointment on compassionate grounds is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Sita Ram opted not to file her claim statement with the Tribunal.

3. Notice was sent to Shri Sita Ram by registered post on 27.12.2012, calling upon him to file claim statement

before the Tribunal on or before 17.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to her by registered post on 22.01.2013 calling upon him to file claim statement before the Tribunal on 11.02.2013. Notice was again transmitted to the claimant by registered post on 12.02.2013 and 12.03.2013 asking him to file his claim statement on or before 08.03.2013 and 09.04.2013 respectively. Lastly, notice dated 10.04.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 24.05.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question referred for adjudication was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that no notice of demand was served upon it. Hence, the dispute has not acquired status of an industrial dispute. The Corporation further pleads that for want of espousal, the dispute has not acquired character of an industrial dispute. It projects that Ms.Beena, mother of the claimant, expired on 09.11.1997. After her death, the claimant was engaged as a safai karamchari on daily wage basis for a period of 89 days, which engagement was further extended for a period of 89 days. Thereafter, the claimant was never engaged by the Corporation. Family of Ms.Beena survived for long 16 years. Now, it cannot claim that the said family is facing starvation. Claim for appointment in the service of the Corporation on compassionate grounds and regularization of service is uncalled for. Reference may be answered in favour of the Corporation, pleads the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the Employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd.(1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd.(1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that "...demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd. (1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and

claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex Court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In New Delhi Tailor Mazdoor Union [1979 (39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must-prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "It is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984(2) LLJ 259].

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order,

therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non-employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non-employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non-employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression any person is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex, Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non-employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is

supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on this score also.

24. The Corporation projects that the claimant was engaged for a period of 89 days as daily wage safai karamchari, after the death of his mother. The period of his engagement was extended for a period of 89 days and thereafter he was never engaged. Thus, it is emerging over the record that after death of Smt.Beena, mother of the claimant, latter was engaged by the Corporation on two spells for period of 89 days each only. He was never appointed on compassionate grounds.

25. Now coming to facts, when the claimant moved an application for appointment on compassionate grounds, no vacancy was available for him. The Corporation can offer 5% of the posts to such applicants. Since the case of the claimant could not be considered for compassionate appointment, for want of a vacant post, the Corporation granted him appointment on daily wage basis on humanitarian grounds, for two short spells. Thus, it is emerging over the record that his engagement on daily wage basis was not against the policy of compassionate appointment. The Corporation engaged the claimant on humanitarian grounds, with a view to help him. Phased manner regularization policy of the Corporation to regularize services of casual employees, appointed on humanitarian grounds, was adopted by the Corporation vide its resolution No.273 dated 27.06.1988. This policy of regularization of such employees in a phased manner does not come to the rescue of the claimant, since he was

engaged only for two spells of 89 days each in the year 1997. Hence he has no case on factural matrix too.

26. From the foregoing reasons, it is evident that the claimant is not entitled for relief of appointment on compassionate grounds and regularization in service of the Corporation. Action of the Corporation in not regularizing services as safai karamchari, when he was engaged at two spells of 89 days only, is found to be legal and justified. Claimant is not entitled to any relief. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Date: 29.11.2013

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 167.—औद्योगिक विवाद अधिनियम 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त दिल्ली नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰-1 के पंचाट (संदर्भ संख्या 16/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/141/2012-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.16/2013) of the Central Government Industrial Tribunal/Labour Court No.1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, MCD and their workman, which was received by the Central Government on 26/12/2013.

[F. No. L-42012/141/2012-IR(DU)]

P.K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DELHI

I.D. No.16/2013

The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi. ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi — 110006. ...Management

AWARD

Shri Karamvir, was working as daily wager Safai Karamchari with Municipal Corporation of Delhi (in short the Corporation). He breathed his last on 21.12.1988. Shri Mausam, son of the deceased, was one of the persons, who survived him. He presented an application for appointment on compassionate grounds, which application was rejected by the Corporation. However on 13.10.2008, he was engaged as a substitute Safai Karamchari. Now he claimed for regularization of his services as a permanent employee on regular pay scale with all consequential benefits, from the date of appointment on compassionate grounds with the Corporation. His claim was rejected by the Corporation on the count that Shri Karamvir was not working on a substantive post. He approached the Nagar Nigam Karamchari Sangh (in short the union) for redressal of his grievances. The union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/141/2012-IR(DU) New Delhi dated 10.12.2012, with following terms:

> "Whether action of the management of Municipal Corporation of Delhi in denying the regularization of services of Shri Mausam, S/o late Karamvir. Safai karamchari on the permanent post and with all consequential benefits from the date management granted compassionate appointment to the said workman, i.e. form 13.10.2008 is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Mausam opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Mausam by registered post on 06.02.2013, calling upon him to file claim statement before the Tribunal on or before 04.03.2013. This notice was sent to his through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to his by registered post on 03.04.2013 calling upon his to file claim statement before the Tribunal on 26.04.2013. Notice was again transmitted to the claimant by registered post on 30.04.2013 asking him to file his claim statement on or before 06.06.2013. Lastly, notice dated 01.08.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 02.09.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question, referred for adjudication, was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that no notice of demand was served on it prior to raising of dispute, hence it has not acquired status of an industrial dispute. The Corporation further pleads that for want of espousal, dispute has not acquired character of an industrial dispute. Claimant is not entitled to get regularization in service of the Corporation with effect from 13.10.2008, the date when he was engaged as substitute safai karamchari. His claim is not maintainable. It is liable to be dismissed being devoid of merits, pleads the Corporation. Even otherwise, Shri Karamvir never worked with the Corporation as a regular employee and as such, the claimant is not entitled for compassionate appointment after his death. It has been projected that the claim is liable to be dismissed.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd.(1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that "...demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. [1976 Lab.I.C. 285] and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal [1978(1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the

workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In New Delhi Tailor Mazdoor Union [1979 (39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists (supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984(2) LLJ 259].

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argued that the dispute has not acquired status of an industrial dispute for want of espousal by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. The Corporation does not dispute status of the claimant, being a workman within the meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non-employment, terms of employment or condition of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non-employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non-employment,, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus.

> "We also agree with the expression 'any person' is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute "is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred

that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a regisiered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

24. For claim of regularization in service, it was incumbent upon the claimant to establish that his father was appointed with the Corporation against a sustentative post. As projected by the Corporation in the written statement, Shri Karamvir was not working on any substantive post. A daily wager Safai Karamchari is not borne on the strength of the Corporation, where he was engaged intermittently in exigencies of service. Therefore, such casual employee not render any service against any substantive post. In view of these facts, son of deceased, Shri Karamvir is not entitled to raise a claim for his appointment in the service of the Corporation, on compassionate grounds. He was engaged in October, 2008, as a substitute Safai Karamchari, which engagement does not confer on him any right to claim regularization of his services on the post, since the date of his engagement. Resultantly, it is concluded that action of the Corporation in denying regularization of service of Shri Mausam as a permanent employee is found to be justified. Shri Mausam is not entitled to any relief on factual proposition too.

25. The foregoing reasons make me to conclude that Shri Mausam is not entitled to regularization in the service of the Corporation. Action of the Corporation in denying regularization in its service to Shri Mausam is found to be justified. No relief can be granted in favour of Shri Mausam. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 02.09.2013

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 168.—औद्योगिक विवाद अधिनियम 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त दिल्ली नगर निगम के प्रबंधतंत्र के संबंघ नियोजकों और उनके कर्मकारों के

बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰-1 के पंचाट (संदर्भ संख्या 16/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 26.12.2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/56/2012-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.160/2012) of the Central Government Industrial Tribunal/Labour Court No.1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, MCD and their workman, which was received by the Central Government on 26.12.2013.

[F. No. L-42012/56/2012-IR(DU)]
P.K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI

I.D. No. 160/2012

The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi. .....Workman

Versus

The Commissioner,
Muncipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi -110006. .....Management

AWARD

Shri Roshan Lal, was working as substitute safai karamchari with Municipal Corporation of Delhi (in short the Corporation). He breathed his last on 21.12.1988. Smt. Bachni Devi, survived the deceased employee. She moved an application for her appointment on compassionate grounds, which application was declined by the Corporation on the count that Shri Roshan Lal was not working on any substantive post. However, on 30.10.95, she was engaged as a substitute Safai Karamchari. Now she claimed for regularization of her services as a permanent employee on regular pay scale with all consequential benefits from the date of appointment on compassionate grounds. Since the deceased, Shri Roshan Lal was a casual employee, the Corporation declined her claim. She approached the Nagar Nigam Karamchari Sangh (in short the union) for redressal of her grievances. The union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-42012/56/2012-IR(DU) New Delhi dated 31.10.2012, with following terms:

> "Whether action of the management of Municipal Corporation of Delhi in denying the regularization of services of Smt. Bachni Devi, W/o late Roshan Lal as a permanent employee on regular pay scale with all consequential benefits from the date management granted compassionate appointment to the said workman, i.e. form 30.10.1995 is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 day of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Smt.Bachni Devi opted not to file her claim statement with the Tribunal.

3. Notice was sent to Ms. Bachni Devi by registered post on 03.122012, calling upon her to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to her through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by registered post on 02.01.2013 calling upon her to file claim statement before the Tribunal on 29.01.2013. Notice was again transmitted to the claimant by registered post on 31.01.2013 asking her to file her claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that no notice of demand was served on the management prior to raising of

dispute, hence it has not acquired status of an industrial dispute. The Corporation further pleads that for want of espousal, dispute has not acquired character of an industrial dispute. Claimant is not entitled to get regularization in service of the Corporation with effect from 30.10.1995, the date when she was engaged as substitute safai karamchari. Her claim is not maintainable. It is liable to be dismissed being devoid of merits, pleads the Corporation. Even otherwise, Shri Roshan Lal never worked with the Corporation as a regular employee and as such, the claimant is not entitled for compassionate appointment after his death. It has been projected that the claim is liable to be dismissed.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd. [1970 Lab.I.C.421], High Court of Delhi went a step ahead and held that "...demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd.[1976 Lab.I.C. 285] and Himachal Pradesh High Court in Village Paper Pvt. Ltd.[1993 Lab.I.C. 99]. However, the Apex Court in Bombay Union of Journalists [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambunath Goyal [1978(1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In New Delhi Tailor Mazdoor Union [1979(39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court

further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal, must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984(2) LLJ 259].

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person,"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with (i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The

observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute "is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLS;500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored

the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference.
Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute, The reference is liable to be answered against the claimant on that score.

24. For claim of regularization in service, it was incumbent upon the claimant to establish that her husband was appointed with the Corporation against a sustantative post. As projected by the Corporation in the written statement, Shri Roshan Lal was not working on any substantive post. A substitute safai Karamchari is not borne on the strength of the Corporation where he was engaged intermittently in exigencies of service. Therefore, such casual employee would not render any service on a substantive post. In view of these facts, widow of deceased, Shri Roshan Lal is not entitled to claim for her appointment in the services of the Corporation, on compassionate grounds. However she has been engaged by the Corporation on substitute Safai Karamchari in the year 1995 on compassionate grounds. Such engagement is not in consonance with the scheme of compassionate appointment to confer any right on the claimant to seek her regularization, in pursuance of the provisions of the said scheme. Resultantly, it is concluded that action of the Corporation in denying regularization of service of Smt. Bachni Devi as a permanent employee is found to be justified. Smt. Bachni Devi is not entitled to any relief on factual proposition too.

25. The foregoing reasons make me to conclude that Smt.Bachni Devi is not entitled to regularization in the service of the Corporation. Action of the Corporation in denying regularization in its service to Smt. Bachni Devi is found to be justified. No relief can be granted in favour of Smt. Bachni Devi. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 02.09.2013

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 169.—औद्योगिक विवाद अधिनियम 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, ब्हीकल फैक्ट्री के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/182/99) प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-14011/24/1998-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल अनुभाग अधिकारी

New Delhi, dated 26th December 2013

S.O. 169.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/182/99) of the Central Government Industrial Tribunal-cum-Labour Court, JABALPUR as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the General

Manager, Vehicle Factory and their workman which was received by the Central Government on 26.12.2013.

[F. No. L-14011/24/1998-IR(DU)]
P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/182/99

PRESIDING OFFICER: SHRI R. B. PATLE

General Secretary,
Vehicle Factory Pratiraksha Mazdoor Sangh,
Q.No.2491, Type-2,
Sector-1, Vehicle Factory Estate,
Jabalpur ...Workman/Union

Versus

General Manager,
Vehicle Factory,
Jabalpur (MP) ...Management

AWARD

(Passed on this 18th day of June, 2013)

1. As per letter dated 26-4-99 by the Government of India, Ministry Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/24/98/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Vehicle Factory, Jabalpur in reducing the salary of Shri S.K. Sengupta Millwright H.S.Garde-2 from 21-2-95 by the order dated 20-2-95 i.e. reducing his salary from Rs.1410 to Rs.1380 as a measure of punishment is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by union at Page 4/1 to 4/5. The case of Union is that Shri S.K.Sengupta workman was General Secretary of Union in the year 1997-98. He was working as Millwright at Vehicle Factory, Jabalpur. Chargesheet was issued to workman on 19-5-95 about using un-parliamentary language towards the officer of M.M.Section Shri A.R.Sit. The workman denied charges submitting his reply. That without giving any opportunity or conducting Departmental Enquiry, punishment of withholding one increment was imposed on 23-9-95. The appeal preferred against the order of punishment was rejected on 26-8-96. It is submitted that punishment of withholding one increment is imposed by victimization by colourable exercise of powers. The punishment is illegal. There is no evidence to prove charges. The workman had requested to hold regular enquiry but no enquiry was held. Workman was denied reasonable opportunity of hearing. Punishment is illegal, violation of principles of natural justice. It is prayed to be set-aside. IInd party management submitted Written Statement at Page 6/1 to 6/2. He ubmitted that Shri Sengupta was working as Millwright in MM Section of Vehicle Factory, Jabalpur. On 4-5-95 he had honed Shri A.R.Sit asking why night shift in MM Section was stopped. He was not satisfied with the answer given by the Works Manager, The workman used unparliamentary language. Again on 5.5.95, the workman wanted to discuss issue with the Works Manager, Despite of it, he was told that officer would be coming to MM Section. The workman rushed alongwith gang and came to MM Section where officer was sitting. He used unparliamentary language against Officer. On report of incharge of MM Section, chargesheet under Rule 14 of CCS Rule was issued. That conduct of Shri Sengupta amounts to gross misconduct . The workman denied the charges and requested for enquiry. However minor punishment was imposed of reduction of pay for one year IInd party submits that punishment is legal and reliefs prayed by workman be rejected.

3. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Vehicle Factory, Jabalpur in reducing the salary of Shri S.K.Sengupta Millwright H.S.Garde-2 as per order dated 20-2-95 is legal ?	In Affirmative
(ii)	If so, to what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

4. Though legality of punishment for reducing pay of Shri S.K.Sengupta by one stage is challenged, the Union failed to adduce evidence. The evidence of workman was closed on 17-9-09. Affidavit evidence is filed by .K.Mishra and Shri Anuj Kishore Prasad oiling the contentions in Written Statement filed by the IInd Party. The evidence of both the witnesses remained unchallenged as were not cross-examined on behalf of workman. The right to Cross-examine the management's witness was exercised. The workman failed to participate in the reference proceeding. The witnesses were discharged. Without submitting application to call back the order dated 17-9-09, the workman filed affidavit of his evidence on 30-3-2011. However he failed to appear for cross- examination. Therefore evidence of workman cannot be considered. The evidence of management's witness remained unchallenged. Therefore the punishment of reduction of pay imposed against

workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

5. In the result, award is passed as under:-

(1) Action of the management of Vehicle Factory, Jabalpur in reducing the salary of Shri S.K.Sengupta Millwright H.S.Garde-2 as per order dated 20-2-95 is legal ?

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 170.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय विद्यालय के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 05/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42011/17/2009-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Principal, Kendriya Vidyalaya School and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-42011/17/2009-IR(DU)]
P. K.VENUGOPAL, Séction Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Wednesday, the 29th October, 2013

Present : K. P. PRASANNA KUMARI,

Presiding Officer

Industrial Dispute No. 5/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub- section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Kendriya Vidyalaya School and their workman)

BETWEEN

Smt. P. Thangam : 1st Party/Petitioner

AND

The Principal : 2nd Party/Petitioner
Kendriya Vidyalaya School
INS Kattabomman, Vijayanarayanam
Nanguneri Taluk
Tirunelveli Taluk

Appearance:

For the 1st Party/Petitioner : M/s K.M. Ramesh, Advocates

Respondent : Sri M. Vaidyanathan,
For the 2nd Party/ : Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/17/2009-IR(DU) dated 22.12.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Kendriya Vidyalaya, Vijayanarayanam, in not considering the reinstatement with back wages to their workman Smt P. Thangam, from 06.03.1996 is legal and justified? What relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 5/2011 and issued notice to both sides. The petitioner and the respondent through their respective counsel and filed their Claim and Counter Statement respectively.

3. The case in the Claim Statement in brief is this:

The First Party was appointed as a Basic Servant at Kendriya Vidyalaya School, INS, Kottabomman, Vijayanarayanam, Nanguneri Taluk, Tirunelveli on casual basis and worked continuously from 01.01.1995 to 28.07.1995. From 27.07.1995 to 05.12.1995 she had been employed on monthly salary of Rs. 868. Since the school was situated in a prohibited area, under the control of Indian Navy, she was issued a valid pass for entry in the school. The First Party had worked continuously from 01.01.1995 to 28.07.1995 for 209 days without any break. Her salary for the period from 01.01.1995 to 28.07.1995 was paid to her by voucher, on obtaining her signature. The First Party went on maternity leave from 05.12.1996 and had been paid salary for the maternity leave period also. In all, the First Party had worked continuously for 338 days in the school. After three months of her maternity leave the First Party had reported for duty on 06.03.1996. However, she was not allowed to join duty. Her services had been terminated

without any reason and without an order in writing. There is no justification in the termination of the First Party from the services of the Second Party. She is entitled to reinstatement. An order may be passed directing the Second Party to reinstate the First Party in service with continuity of service, backwages and all other attendant benefits.

4. The Second Party has filed Counter Statement contending as follows :

It is incorrect to state that the First Party was appointed as Basic Servant at Kendriya Vidyalaya School, INS Kattabomman on casual basis and worked continuously from 01.01.1995 to 28.07.1995. So also it is incorrect to state that she worked in the Vidyalaya from 29.07.1995 to 05.12.1995 on a monthly salary of Rs. 868/- The First Party had worked in the Vidyalaya for 45 days from 29.07.1995 to 28.09.1995 and for 21 days from 20.10.1995 to 17.11.1995 as casual labour and was paid wages @ Rs. 29/- a day. She was paid Rs. 1305/- by cheque dated 17.10.1995 and Rs. 609/- by cheque dated 04.01.1996. The claim of the First Party that she has worked for 338 days in all in the school is incorrect. The claim of the First Party that she had availed Maternity Leave for 3 months and had reported for duty after that on 05.12.1995 but was not allowed to rejoin duty and was thus terminated from service also is false. Her claim that she was assured that she would be taken back into service after expiry of Maternity Leave also is incorrect. Such an assurance could not have been given since Kendriya Vidyalaya Sangathan is following the recruitment procedure approved by the Board of Governors of Kendriya Vidyalaya Sangathan. The First Party is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and exhibits marked as ExsW1 to Exs.W6 and ExsM1 and Exs.M2.

6. **The Points for consideration in the case are :**

(i) Whether the First Party was terminated from the services of the Second Party illegally and without any justification?

(ii) Whether the First Party is entitled to the relief of reinstatement in service? if not what if any is the relief to which she is entitled?

The Points

7. The First Party claims that she has joined the services of the Second Party as a Basic Servant on 01.01.1995 and had continued with the services of the Second Party for a period of 338 days. According to her, she had availed Maternity Leave from 05.12.1996 and has been paid salary for the period of Maternity Leave also. According to her, when she went back to the Vidyalaya to rejoin duty on 06.03.1996 she was not permitted to do so and was terminated from service. The case of the First Party is that having worked in the Vidyalaya for 338 days she was entitled to continue in service and the act of the Second Party in turning her out without allowing her to join duty on 06.03.1996 is illegal and unjust.

8. The stand of the Second Party is that the First Party had worked in the Vidyalaya only for 2 spells, initially for 45 days from 29.07.1995 to 28.09.1995 and later for 21 days from 20.10.1995 to 17.11.1995 as a casual labour and her remuneration @ Rs. 29/- a day for these two periods has been disbursed to her by two cheques. The case of the Second Party is that the First Party is not entitled to any relief since she has altogether worked for only 66 days at the school.

9. The First Party has submitted affidavit in lieu of Chief Examination reiterating the case in the Claim Petition and has been cross-examined. She has produced 6 documents also to substantiate the case. Out of this, the material documents are the two receipts for payment of wages and marked as Ex.W1 and Ex.W2 respectively. Ex.W1 shows that she was paid Rs. 1305/- as wages for 45 working days @ Rs. 29/- per day for the period from 29.07.1995 to 28.09.1995. Ex.W2 shows that she was paid Rs. 609/- towards wages for the period from 20.10.1995 to 17.11.1995, for 21 working days. Both these receipts show that she was treated as a casual labourer and the amounts were paid towards casual labour charge. Ex.M1 and Ex.M2 produced by the Second Party are in fact replicas of Exs.W1 and Ex.W2 respectively. These documents, in fact, justify the case of the Second Party that the First Party worked in the Vidyalaya only for 66 days altogether.

10. The case of the First Party is that she had worked in the Vidyalaya for a longer period though she had produced Ex.W1 and Ex.W2 only showing receipt of wages. If actually the First Party had worked with the Second Party for a longer period as claimed by her she should have been able to produce the required documents. If she has taken care to retain Ex.W1 and Ex.W2 she would have necessarily retained documents showing that she had worked in the Vidyalaya for a longer period. There is no material at all to show that the First Party had worked with the Vidyalaya for a longer period than admitted by the Second Party that is a period of 66 days. Her claim that she was allowed Maternity Leave by the Vidyalaya must be absolutely without any basis. A casual labourer is not entitled to Maternity Leave at all. So it is not likely that the First Party was given Maternity Leave and that also with salary.

11. Since the First Party has worked with the Second Party only for a very short period as a casual labourer only there is no question of her being reinstated into service. She will not be entitled to any compensation under Section-25F of the Industrial Disputes also since she has failed to establish that she has worked for the required period. The First Party is not entitled to any relief.

12. The reference is answered against the First Party.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Smt. P. Thangam

For the 2nd Party/Management : MW1, Sri G.B. Naidu

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	17.11.1995	Receipt of payment of salary for the period 29.07.1995 to 28.09.1995
Ex.W2	04.01.1996	Receipt of payment of salary for the period 20.10.1995 to 17.11.1995
Ex.W3	21.10.2005	Award passed by the Labour Court, Tirunelveli in ID No. 30/1999
Ex.W4	27.02.2009	Report on failure of conciliation issued by the Asstt. Labour Commissioner (C), Mumbai
Ex.W5	18.05.2009	Order issued by the Ministry of Labour, Govt. of India
Ex.W6	18.10.2010	Order of the Madurai Bench of the Madras High Court in WP (MD) No. 8587 of 2009

On the Management's side

Ex.No.	Date	Description
Ex. Ml	17.11.1995	Receipt for Rs. 1305/- received by the First Party
Ex.M2	04.01.1996	Receipt for Rs. 609/- received by the First Party

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 171.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चण्डीगढ़ के पंचाट (704/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-12012/159/2001-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 704/2005) of the Cent. Govt. Indus. Tribunal - cum - Labour Court II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 26/12/2013.

[F. No - L-12012/159/2001- IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Sri Kewal Krishan, Presiding Officer.

Case No. I.D.704/2005

Registered on 25.8.2005
Smt. Nirmala Devi C/o Sh. Tek Chand Sharma 25, Sant Nagar, Civil Lines, Ludhiana. ...Petitioner

Versus

Union Bank of India, The Asssistant General Manager, UBI, Regional Office, Bank Square, Sector 17B, Chandigarh. ...Respondent

APPEARANCES:

For the workman Sh. Tek Chand Sharma Advocate.

For the Management Sh. B.B. Bagga Advocate.

AWARD

(Passed on 24-10-2013)

Central Government ,vide Notification No. L-12012/159/2001 ((lR(B-11)) Dated 28.11.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Union Bank of India in awarding the punishment of dismissal from services of Smt. Nirmala Devi, Clerk/ Cashier is just and legal? If not, what relief the workman is entitled to and from which date?"

After receiving the reference, notice was issued to the workman as well as to the management.

Workman appeared and filed statement of claim pleading that she was dismissed from service vide impugned order dated 8.1.2000 without conducting proper and valid inquiry. That she was issued a charge-sheet vide letter dated 3.3.1999 but the designation of the disciplinary authority was not disclosed. That the inquiry officer himself

was the Inquiry Officer as well as the disciplinary authority. He prepared the report and submitted the same to himself. That the inquiry report is not based on any evidence. She has given written submissions prior to the imposing of penalty which were not considered at all and consequently the impugned order was passed which is not legal and valid.

Management filed written reply admitting that the workman was its employee and was dismissed from service after holding a legal and valid inquiry. That the workman was guilty of falsification of accounts and tampering with the record etc. and after holding a proper departmental inquiry, charges were found proved against her and considering the entire matter, the impugned order was rightly passed.

In support of her case the workman appeared in the witness box and filed her affidavit reiterating her case as set out in the claim petition. On the other hand the management examined Banta Ram who filed his affidavit reiterating the case as stated in the written statement.

The workman was proceeded ex parte vide order dated 19.10.2010.

I have heard Sh. B.B. Bagga counsel for the management and have gone through the file carefully.

It is not disputed that the workman was charge-sheeted on account of falsification of account-books i.e. she enhanced sum of Rs 10000/- in account No 10557 in May 1998 and she made false entry in the account of Smt. Priya Gulati in April 1998 and she also tampered with the entries of account No. 4/84 of Santosh Kumari. Similarly she made other false entries in the SB accounts of other persons. A due charge-sheet was issued to her to which she submitted reply. Finding it not satisfactory, a departmental inquiry was held and the Inquiry Officer, after examining the evidence found that charges are proved against the workman. After considering the inquiry report, the impugned order dated 8.1.2010 dismissing the workman from service was passed.

Before passing the said order the workman was also given an opportunity of personal hearing. Thus it cannot be said that there was any defect in the inquiry or the impugned order was passed without any basis. Therefore it is to be held that the impugned order was passed after holding a fair and proper inquiry.

The workman was dismissed from service. She was given opportunity of personal hearing before passing the impugned order and considering her work and conduct of tampering the bank accounts, she was not found fit to be retined in service. There is hardly any gain-saying that in the banking business, people repose confidence only on account of the fact that transactions are duty and properly entered therein. But if the employee indulge in tampering with the records, the confidence of the people would be eroded which in consequenc will effect the economy of the country. In the circumstances the penalty of dismissing the workman from service was rightly imposed and the same do not call for any interference.

Thus it is held that the punishment of dismissal from service was rightly awarded to the workman and workman is not entitled to any relief and reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का॰आ॰ 172.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार अशोक होटल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰-1, नई दिल्ली, के पंचाट (संदर्भ संख्या 130/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42025/03/2013-आई आर (डी.यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.130/2013) of the Central Government Industrial Tribunal/Labour Court No.1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ashok Hotel and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-42025/03/2013-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DELHI

I D.No.130/2013

Shri Babu Rao
S/o Sh.Gaindu Rao,
Through President,
Ashok Hotel Mazdoor Janta Union,
C-48-49, Ashok Hotel Staff Qtr.,
50-B, Chanakyapuri, New Delhi - 110021 ...Workman

Versus

The Management of
Ashok Hotel,
Through its General Manager, New Delhi ...Management

AWARD

Shri Bapu Rao joined services of Ashok Hotel (in short the Hotel) in 1996 as a houseman/sweeper in the main kitchen department for carrying out house keeping jobs. His services were abruptly dispensed with on 01.12.2008. His case for regularization in services of the Hotel was answered in his favour, by the Industrial Tribunal constituted by the Govt of NCT Delhi, vide award dated 05.10.2005. The Hotel challenged the award in High Court of Delhi through writ petition No.14828 of 2006, which was also decided in favour of the claimant. However, during pendancy of the matter before the High Court, his services were dispensed with by the Hotel. An industrial dispute is raised by the claimant before this Tribunal on 03.10.2013, using right available to him under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under sub-section (1) of section 10, of the, Act.

2. Arguments on maintainability of the dispute were advanced by Shri S.S.Upadhyay, authorized representative of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

3. As record projects, dispute under reference is raised by the claimant, namely, Shri Bapu Rao under sub section (2) of section 2A of the Act. The term "industrial dispute" has been defined by sub-section (k) of section 2 of the Act to mean "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment terms of employment or with the conditions of labour, of any person". The definition of "industrial, dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workman or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with --(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

4. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem , to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the management does not dispute that the claimant is workman within the meaning of clause(s) of Section 2 of the Act.

5. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

6. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendancy of an industrial dispute or he has been dismissed or discharged during such pendancy, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act. An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganized. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

7. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or

considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

8. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service, it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter into the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the appropriate Government. On consideration of the report, so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, vide Amendment Act No. 24 of 2010, inserted sub section (2) and (3) in section 2A and re-numbered original section as sub section (1) in order to enable the workman to approach an industrial adjudicator for ajudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

> "(2) .Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may make an application direct to Labour Court or Industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
>
> (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

9. Provisions of sub section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation officer, he may approach the Industrial Adjudicator for adjudicate of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the Conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

10. Bare perusal of sub section (3) of section 2A makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

11. As emerged out of the claim statement, services of the claimant was terminated on 01.12.2008. Claimant projects that the Conciliation Officer entered into conciliation proceedings and forwarded his failure report to the appropriate Government on 23.09.2013. Out of facts presented by the claimant, it emerged over the record that his Services were disengaged by the management on 01.12.2008. He raised an industrial dispute before this Tribunal on 3.10.2013, using provisions of sub section (2) of section 2A of the Act. For approaching this Tribunal, under provisions of sub-section (2) of section 2A of the Act, limitation of three years from the date of discharge,

dismissal, retrenchment or otherwise termination of service of an employee has been imposed by the legislature. Thus, it is apparent that the claimant could have approached this Tribunal under sub-section (2) of section 2A of the Act till 30.11.2011 only. As is evident, claim preferred is beyond the period of limitation. Under these circumstances, this Tribunal cannot invoke its jurisdiction for adjudication of the dispute.

12. Since the dispute has been raised beyond the period of limitation, the Tribunal cannot entertain it. Under these circumstances, the Tribunal is constrained to brush aside the claim statement, presented by the claimant. Accordingly, his claim is dismissed, being barred by time. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 03.10.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 27 दिसंबर, 2013

का॰आ॰ 173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय पुनर्वास प्रशिक्षण एवं अनुसंधान संस्थान के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 17/2000) प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42011/19/2000-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.17/2000) of the Central Government Industrial Tribunal/Labour Court No.1, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director, National Institute of Rehabilitation Training & Research and their workman, which was received by the Central Government on 27/12/13.

[F. No. L-42011/19/2000-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 17/2000

Date of Passing Award — 13th September, 2013

Between:

The Director, National Institute of Rehabilitation Training & Research, Olatpur, Po. Bairoi, Cuttack.

... 1st Party-Management.

(And)

The General Secretary, National Institute of Rehabilitation Training and Research Employees Union, Po. Bairoi, Cuttack.

..... 2nd Party—Union.

Appearances:

M/s. Ganeswar Rath, Advocate.	:	For the lst Party—Management.
Shri C.R. Mohanty, General Secretary.	:	For the 2nd Party—Union.

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Director, National Institute of Rehabilitation Training and Research and their workmen in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 vide its letter No. L-42011/19/2000/IR (DU), dated 05.07.2000 in respect of the following matter.

> Whether the demand No. 1 to 4 (List attached) of National Institute of Rehabilitation Training and Research Employees Union are justified? If yes, to what relief the employees are entitled?

2. The 2nd Party-Union through its General Secretary has filed its statement of claim alleging that the establishment of the 1st Party-Management is functioning since 1975 with the purpose of giving service to the public on payment. But the employees rendering their valuable services are not being given proper and genuine benefits whereas the employees of other similar establishments are getting much more benefits. The 2nd Party-Union submitted a charter of demands to the Management with a request to settle the disputes amicably. When their demands were turned down, the matter was raised before the concerned conciliation officer. But due to non-cooperation of the Management the grievances of the 2nd Party-Union could not be duly addressed and consequently the conciliation proceedings ended in failure. Thereafter the Central Government referred the dispute regarding four demands of the 2nd Party-Union, namely, the time scale promotion, payment of pension, filling up of vacant posts and filling up of vacant posts having pay scale of Rs. 5500 — 9000 on

the recommendations of the Departmental Promotion Committee.

3. The contention of the 2nd Party-Union is that the establishment of the 1st Party-Management is fully owned by the Government of India which comes under the supervision and control of the Ministry of Social Justice and Empowerment. On 20.10.1984 the establishment of the 1st Party-Management was merged with the National Institute of Rehabilitation Training and Research shortly known as NIRTAR and registered as society under the Societies Registration and from that date the employees of the 1st Party-Management were declared to be the employees of the Government of India and service conditions of the employees of the Government of India were made applicable to them. Their wage structure was re-formed at par with the employees of the Government of India, but they have not given other service benefits including promotional facilities as were admissible to the employees of the Government of India.

4. Subsequently it was decided that the employees of the 1st Party-Management will be given pay scale of the next higher posts under time scale promotion policy vide Office Order dated 16.10.1990, but without giving designation of higher posts. By virtue of this office order only 91 employees were granted time scale. But thereafter no time scale promotion is being given to the eligible employees even after rendering more than ten years of service. The 1st Party-Management is not giving the post retirement benefits such as pension, gratuity, G.P.F. etc to its employees. Later-on after repeated demands the 1st Party-Management has formed a consolidated fund for payment of pension and pensionary benefits which are now being been given from the consolidated fund. This is in violation of terms of employment and conditions of service. The 1st Party-Management is not filling the vacant posts in senior cadres by promotion, but is engaging employees of different departments to discharge the duties of such posts instead of promoting its employees. Therefore the vacant posts are needed to be filled up as quickly as possible by giving promotion to the employees through Departmental Promotion Committee. The 1st Party-Management is also not filling up the posts bearing pay scale of Rs. 5500 to 9000, but is recruiting candidates from the direct sources as a result of which promotional avenues of the lower grade employees are being cut. Therefore all posts in the pay sale of Rs. 5500 to Rs. 9000 should be filled up by promotion on the recommendation of the Departmental Promotion Committee.

5. The 1st Party-Management in its written statement has submitted that NIRTAR is a Hospital-cum-Training and Research Institute devoted to the rehabilitation services for the persons with disabilities. On 22.2.1984 it became a separate autonomous body registered under the Societies Registration Act, 1882 and came to the direct administrative control of the Ministry of Social Justice and Empowerment, Government of India. It adopted Central Government rules and regulations so as to enable the employees to derive the benefits of 4th pay commission. Since then same are being followed. The employees are performing their duties as per their duty roster like in any other hospital and are being extended the benefits as applicable to the Central Government employees on the specific orders issued by the Ministry of Social Justice and Empowerment. All the benefits are not extended automatically to its employees as being done in the case of the Central Government Employees. On coming to the administrative control of the Ministry of Social Justice and Empowerment a tripartite agreement was reached by virtue which the employees exercised their option for availing of the benefits of 4th pay commission recommendation as applicable. The allegation of the employees that their service conditions were changed and they were compelled to work like the employees of the Government of India by relinquishing the benefits which they were receiving prior to 20th October, 1984 and revision of wage structure by the Management are incorrect and misleading. The matter of promotional avenues was considered by the 20th Executive Council held on 10.4.1990 and it approved promotion of those employees to the next higher scale who had completed five years of service as a one time measure to avoid stagnation. Accordingly promotions were made to Group-C and Group-D employees who have completed five years of service vide G.O. No. 28/90. Since the promotion was granted as a one time measure the same could not be continued. The employees Union did not raise this Issue during that time. With effect from 1.1.1996 the benefits of 5th pay commission were made applicable to the employees of NIRTAR and orders for time scale promotion based on ACP were received. 50th Executive Council and 16th General Council approved the implementation of ACP to the employees of NIRTAR. The final clearance of the Ministry was received vide letter dated 18.10.2000 and the same is being implemented. Therefore, it is not practicable to consider time scale promotion retrospectively. The NIRTAR being an autonomous body and registered society the employees are not eligible to get their pension from Government Treasury. However a pension fund has been built up by its own arrangements and the employees who are retiring from service are being granted the benefits of pension, gratuity, G.P.F. etc. invariably at par with the Central Government employees without any delay. Regarding filling up of the vacant posts, 16 posts out of 23 vacant posts, which were technical and crucial in nature were filled up. Remaining seven posts will also be filled up gradually as per respective recruitment criteria depending on the requirement. So far as filling up of posts bearing pay scale of Rs. 5500 to 9000 by D.P.C., 14 posts out of 26 posts have been filled up by the departmental promotion committee from the existing employees and the remaining 12 posts are being filled up by direct recruitment as per existing recruitment rules

applicable for each category. In case of direct recruitment the employees who are eligible and fulfill the requirement can also apply. At the time of selection no instruction can be given to the selection committee to give preferential treatment to the employees as it will be against the principle of natural justice and will cause prejudice to other aspirants. Therefore the claim petition of the 2nd Party-Union lacks substance and is liable to be dismissed.

6. No issues have formally been framed by my learned predecessor, but the reference can safely be answered by taking into account the dispute referred as per schedule of reference. Accordingly two points of issue come up for adjudication:—

ISSUES

(1) Whether the demand Nos. 1 to 4 (list attached) of National Institute of Rehabilitation Training and Research Employees Union are justified?

(2) If yes, to what relief the employees are entitled?

7. In order to substantiate its claim the 2nd Party-Union has examined three witnesses in evidence, namely, W.W.-1 Shri Gopal Chandra Satpathy, W.W.-2 Shri Birakishore Behera and W.W.-3 Shri Chittaranjan Mohanty and relied on seven documents marked as Ext.-1 to 7

8. On the other hand the 1st Party-Management has examined M.W.-1 Shri Sambhunath Majhi and relied on five documents marked as Ext. -A to E.

FINDINGS

ISSUE NO. 1

9. An industrial dispute with regard to justification of four demands of the 2nd Party-Union has been referred to this Tribunal for adjudication. These demands relate to (1) Time Scale Promotion (ii) Pension (iii) Filling up the vacant posts and (iv) Post bearing scale of pay Rs. 5500—9000 be filled up by departmental promotion committee.

10. The undisputed facts are that the 1st Party-Management was earlier functioning as a Public Sector Undertaking, but it later came under the direct administrative control of Ministry of Social Justice and Empowerment, Government of India. It adopted Central Government Rules and Regulations and also framed bye-laws for administration and management of its affairs. The employees of the 1st Party-Management are not getting certain benefits such as promotional facilities, post retirement benefits, time scale and other promotional avenues as are admissible to the employees of the Government of India.

11. As regards the time scale promotion some of the employees of the 1st Party-Management were given pay scale of the next higher post under time scale promotion without giving designation of higher post. On this score only 91 employees were granted the benefits, who had completed five years of service, but thereafter no time scale promotion was given to the eligible employees even after rendering more than ten years of service. Therefore time scale promotion be given to other employees also with retrospective effect.

12. In this regard the contention of the 1st Party-Management is that the 20th Executive Council in its meeting held on 10.4.1990 approved the promotion of only those employees to the next higher scale, who had completed five years of service as one time measure to avoid stagnation. Accordingly promotions were given to 91 Group C & D employees to 91 employees. The same practice was not continued further. The Union also did not raise this issue during that time.

13. Here it may be mentioned that vide Ext.-2, 91 employees were given promotions with effect from 7.5.1990. The 1st Party-Management has alleged this promotion as a one time measure. But the 2nd Party-Union could not show any reason as to why this issue was not raised at the later stage impressing that the Resolution of the Executive Council was not a one time measure, but it was to be given effect to at due intervals when eligibility of such promotions subsequently arises. The 1st Party-Management has also alleged that only those benefits eligible to Central Government employees are extended to the employees of the 1st Party-Management on which specific orders are issued by the Ministry of Social Justice and Empowerment. All the benefits are not extended automatically to the employees of the 1st Party-Management as is being done in the case of the Central Government employees. Therefore this demand of the 2nd Party-Union cannot be held justified and no relief on this count can be given to them.

14. With regard to the demand of pension, there seems no dispute between the parties as it has been admitted that pensionary benefits, such as pension, gratuity and G.P.F. are being given to the employees of the 1st Party-Management from a consolidated fund created by its own resources. The demand of the 2nd Party-Union is that they should be given pension and other post retirement benefits directly from the Government treasury. But no order of the Government has been issued in this regard. No doubt Rule 6, Sub-Rule VII of by-law of NIRTAR, Ext.-7 provides that the employees of the Institute shall be eligible to pensionary benefits, G.P.F. and gratuity as per the Central Government Rules, but this sub-rule is silent as to from which source pensionary benefits will be provided to the employees of the 1st Party-Management. However, the 1st Party-Management shall make every possible effort to take up the matter with the Government to provide pension to its employees from the Government Treasury like other Central Government Employees so that shortage of funds will not be faced in paying pension to its employees in future.

15. The third demand relates to filling up of the vacant posts. In this regard the 1st Party-Management has alleged that out of the 23 vacant posts 16 posts, which were technical and crucial in nature, were filled up and at the time of filing of written statement/counter only three posts were lying vacant. The Government of India has issued circulars from time to time restraining filling up of vacant posts and surrendering 10% of the existing vacant posts. Because of this reason the vacant posts could not be filled up immediately. M.W.-1 Shri Sambhu Nath Majhi has categorically stated this fact in his examination in chief and the 2nd Party-Union has not denied the assertions made by or on behalf of the 1st Party-Management. The grievance of the 2nd Party-Union as is revealed by its General Secretary Shri Chittaranjan Mohanty W.W.-3 in his evidence is that the Management used to keep most of the posts vacant and surrender some of the Group-C and D posts which should not be surrendered and the vacant posts need to be filled up in time. Now only three posts are said to be vacant in Group-C and D cadre as has been stated by M.W.-1 in his statement before the Court. The 1st Party-Management is directed to fill up these posts as per the Recruitment Rules without any further delay and must continue to fill up the vacant posts in future within a reasonable time.

16. There is another demand for filling up of posts bearing pay scale of Rs. 5500-9000 by departmental promotion committee. The assertions of the 2nd Party-Union is that the 1st Party-Management is recruiting candidates from the open market to fill-up the posts bearing pay scale of Rs. 5500 - 9000 without giving promotion to its employees. Therefore the demand of the Union is that these posts should be filled-up by way of promotion on the recommendation of the Departmental Promotion Committee.

17. On the other hand, the 1st Party-Management has stated that out of 26 posts bearing pay scale of Rs. 5500-9000, 14 posts be filled up by the Departmental Promotion Committee from the existing employees and the remaining 12 posts are being filled-up by direct recruitment as per existing Recruitment Rules applicable for each category. Those employees who are eligible and fulfill the requirement can also apply for these posts. From the side of the 2nd Party-Union it has been admitted by its witnesses namely W.W.-1 Shri Gopal Chandra Satpathy, W.W.-2 Shri Birakishore Behera and W.W.-3 Shri Chittaranjan Mohanty that Recruitment Rules prescribe certain posts to be filled-up by direct recruits and certain other posts are required to be filled-up by departmental promotion committee. If this is the position how the demand of the 2nd Party-Union can be justified that all the posts in the pay scale of Rs. 5500-9000 be filled-up by promotions only under the recommendations of the departmental promotion committee. The 1st Party-Management has to adhere to the Recruitment Rules and it cannot travel beyond that.

18. This issue is decided as per observations made above and conclusions derived thereby.

ISSUE NO. 2

19. For the aforesaid reasons the employees of the 1st Party-Management are not entitled to any immediate and direct relief. The demands raised by the 2nd Party-Union are found justified and reasonable to the extent discussed above and necessary directions have been given to the 1st Party-Management to follow them.

20. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 174.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय राष्ट्रीय राजमार्ग प्राधिकरण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 1/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा.सं. एल-42012/129/2012-आईआर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.01/2013) of the Central Government Industrial Tribunal/Labour Court No.1, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NHAI and their workman, which was received by the Central Government on 27/12/2013.

[F. No. L-42012/129/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

SHRI J. SRIVASTAVA,

Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 1/2013

Date of Passing Order — 1st July, 2013

Between:

1. The Proprietor, Col. Bimal Kumar Chaudhary (retired), P-28, Sangram Security, Jagat Banerjee Ghat Road, Shibpur, Howrah-711102.

2. The Project Director, NH-60, Kharagpur Project Implementation Unit, NHAI Complex, Near Chourangee, Po. Inda, Kharagpur-721 305

3. Ex-Servicemen Security Personnel, Laxmannath Toll Plaza, Laxmannath, Balasore, Orissa.

...1st Party-Managements

(And)

Their workmen Shri Ganesh Chandra Mohanty & 2 Others, Vill./Po Chaka Barahapur,
Dist. Balasore, Orissa — 756 055

...2nd Party Workmen

Appearances:

None : For the 1st Party-Managements.

None : For the 2nd Party-Workmen.

ORDER

Case taken up. Parties are absent. The 2nd Party-workmen have failed to file any statement of claim despite sending ordinary notice on 28.1.2013 and registered notice on 29.5.2013. Nearly a period of six months is going to expire and the 2nd Party-workmen have taken no care to take any steps for further prosecuting their case, though the reference in itself is required to be answered within three months. When the workmen themselves seem to have no interest in their case it will be a wanton effort to keep the case pending indefinitely. It might be that the 2nd Party-workmen have settled their dispute amicably with the Management out of the court and for that reason they are not further prosecuting their case. Under the circumstances a no-dispute award is to be passed in the case and accordingly a no-dispute award is passed.

2. The reference is answered in the above terms.

JITENDRA SRIVASATAVA, Presiding Officer

नई दिल्ली, 27 दिसंबर, 2013

का॰आ॰ 175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ सं. 5/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-2013 को प्राप्त हुआ था।

[फा. सं. एल-12012/23/2010-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-12012/23/2010 - IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. ID No. 5/2010

Shri Raj Kumar son of Maghu Ram, R/o House No. 186/4, Suhra Mohalla, Mandi (HP)

...Applicant

Versus

1. Chief Regional Manager, Indian Overseas Bank, SCO II, Sector 7-C, Chandigarh.

2. Chairman Indian Overseas Bank Central Office, Post Box No.3765-763, Annaselia, Chennai (Tamil Nadu).

3. Branch Manager, Indian Overseas Bank, Mandi, Chaman Complex, Seri Bazaar, Mandi, H.P.

...Respondents/Employer

Appearances:

For the workman : Workman in person

For the management : Shri Prem Nath Katoch

AWARD

Passed on:- 20-11-2013

Central Govt. vide notification No. L-12012/23/2010-IR(B-11) Govt. of India, Ministry of Labour, New Delhi, dated 17.05.2010 has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the Management of Indian Overseas Bank in terminating the Services of Sh. Raj Kumar w.e.f. 01.09.2008 without following the provisions of Sections 25-F, 25-G of the I.D.Act 1947, is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference notices were issued to the parties. Workman filed claim statement in which he alleged that he was engaged by the respondent bank as

Peon/Daftari in Mandi Branch since January 2004, on daily wages and he has completed 240 days in each calendar year. The workman further submitted that he served a request letter to Regional Manager of the respondent bank on 25.6.2008 and also raised an Industrial Dispute regarding non regularization of his services before the Assistance Labour Commissioner Chandigarh on 14.7.2008. Workman further submitted that during the pendency of conciliation proceedings, in utter disregard of provision of Industrial Disputes Act, the respondent bank orally terminated his service on 1.9.2008 without complying with the mandatory provisions of the ID Act. He further submitted that he has worked since January 2004 to 31.8.2008 to the entire satisfaction of the respondent management and completed 240 days in each calendar year. He has also given detail of his working as below:—

Transaction Voucher No.	Dated	Days
300	15.10.2007	15
328	01.10.2007	15
138	01.12.2007	15
164	15.12.2007	15
97	31.12.2007	16
237	17.01.2008	15
216	31.01.2008	16
38	16.02.2008	15
193	01.03.2008	14
137	15.03.2008	15
38	02.04.2008	16
287	15.04.2008	15
171	15.05.2008	15
202	31.05.2008	16
319	16.06.2008	15
93	01.07.2008	15
221	01.08.2008	16
53	16.08.2008	15
Total days		294 days

3. At the time of his termination no notice was given nor any compensation has been paid and provisions of ID Act have been violated by the respondent management. In order to deprive the workman from his job and to deny permanent status. During pendency of Conciliation proceedings, the respondent bank tries to fabricate the vouchers in the name of some unknown person. The workman sought that termination dated 1.9.2008 may be set aside and the management may be directed to reinstate the workman with full back wages and consequential benefits and management may also be directed to regularize the services of the workman.

4. Management filed written statement in which it is submitted by the management that the workman was never employed as peon/daftri as alleged and the workman was not on the roll of the bank but merely a casual worker. The workman was not given any appointment and he was a casual worker assigned duties on day by day basis as and when required and he never completed 240 days in any of the calendar year. Detail of his working is also given in annexure 'A' filed along with the written statement. It is admitted by the bank that application dated 25.6.2008 of the workman was received. As per recruitment rules some persons were called from the employment exchange, interview was conducted on 18.8.2008 and the claimant also applied on 25.6.2008 and it came to the notice of the management that workman was not eligible for the above post on account of his being over age. It is further submitted by the management that workman wants to back door entry into service which is against the recruitment rules of the bank and management requested that the claim of the workman may be rejected.

5. Workman also placed on record application dated 25.6.2008 Ex.W1 application dated 14.7.2008, notice issued by the Assistant Labour Commissioner dated 28.8.2008, letter of the bank dated 27.10.2004 and letter dated 8.8.2008 Ex. W5 and vouchers/withdrawn slip Ex. W7 to W57.

6. In evidence the workman files his affidavit which has been exhibited as WI. The management in evidence tendered two affidavits one of Prem Nath Katoch and another Premlal son of Sandup. The said Shri Premlal was not examined by the management in evidence. Shri Prem Nath Katoch was examined & cross-examined. In cross-examination the witness of the management admitted that no notice or retrenchment compensation was paid to the workman as the same was not required being the workman was working as casual labour. The witness also denied that workman has completed 240 days preceding to the date of termination that is 1.9.2008.

7. My predecessor vide order dated 26.7.2010 while exercising its jurisdiction under section 36(4) of I.D. Act, held that none of the parties shall be permitted to be represented by any advocate.

8. I have heard the parties, and also gone through the record and evidence in the case. Workman during argument submitted that he was employed with the bank from January, 2004 on daily wages and he was turned out from the job w.e.f. from 1.9.2008 and the workman has already put in more than 240 days of service to the date of 1.9.2008 in the precedings 12 months. The management has not

complied with provisions of Section 25F of the ID Act. As the management has not complied with the mandatory provisions of the Industrial Dispute Act the workman is entitled for reinstatement in service with full back wages.

9. In rebuttal the representative of the management submitted that the post was filled up from the persons called from the employment exchange and workman has no right to post as he was working on casual basis. Therefore the workman was not entitled to be given any notice, reinstatement, compensation as he has not put in 240 days mandatory service during one calendar year, the preceding of the date of termination and the reference is deserved to be answered in favour of the management.

10. The management in its reply to the claim statement of the workman clearly mentioned that workman was not employed as peon/daftri and he was also not on the roll of the bank but the management in its reply admitted this fact that the workman was a casual worker. In his claim statement workman mentioned that he has completed 240 days in each calendar year 2007-08 (detail of the working days mentioned in para-5 of the claim statement). Besides this, workman in Ex. W1 to W2 clearly alleged that workman was working in bank since January, 2004 to 31.8.2008 and all these documents have been admitted by the representative of the management.

11. The management filed annexure 'A' along with the affidavit of Shri Prem Nath Katoch. As per annexure 'A', it is submitted that the engagement of workman's for 12 days in 2004, 75 days in 2005, 121 days in 2006, 214 days in 2007 and 131 days from January, 2008 to August, 2008. If calculated, as per the version of the management preceeding to the date of termination that is 1.9.2008, it came to 224 days which excluded Sunday and Holidays. If Sunday and holidays are included then the workman must have worked for 240 days in one calendar preceeding to the date of termination.

12. It is pertinent to mention here that as per Ex. W2 which has been also admitted by the management reveals that since January, 2004 in all calendar year 2004, 2005, 2006 and 2007 he has completed 240 days respectively.

13. After examining the entire documents, oral evidence, the workman completed 240 days preceeding to the date of termination in one calendar year. It is also pleaded by the workman that he submitted application for the post of peon/daftri which was rejected because the workman was not eligible being over age. It is held in the management of Divisional Engineer Telecommunications, Mahaboobnagar Vs. Venkataiah, 2007 (112) FLR 24 that mere completion of 240 days of continuous service in a year can not by itself form the basis for directing regularization of services of a workman.

14. As stated above, the workman's application for recruitment for the post of peon was rejected being overage, workman can not be reinstated in service.

15. In the present case, workman is entitled to get compensation as required in Section 25(F)(b) of the Industrial Disputes Act 1947. The amount of compensation comes to Rs. 6525. Keeping in view the peculiar facts and circumstances of the case, the workman also to get Rs. 5000 as expenses of the litigation.

16. Thus the management is directed to pay Rs. 11525 to the workman within two months from the date of notification of the Award by the Central Govt. Reference is answered accordingly. Central govt. be informed. Hard copy as well as soft copy be sent to the Central Govt. for publication.

Chandigarh.
20.11.2013

S. P. SINGH, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 314/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-2013 को प्राप्त हुआ था।

[फा. सं. एल-22012/296/2003-आईआर (सीएम-II)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 314/2003) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/296/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/314/2003 Date: 29.11.2013

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Santosh Maroti Sapkal, for adjudication, as per letter No. L-22012/296/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Santosh Maroti Sapkal, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Santosh Maroti Sapkal, (the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 11.05.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1991, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleaded the contractor, who appointed him, as a Party and the workman

was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 11.05.1991 to 14.03.1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party No.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he as engaged in F.C.I. through the contractor, "Singh Security Services". The workman in his cross-examination has further admitted that no appointment order was issued by the F.C.I. to him and he has filed no document to show that he was appointed by F.C.I. and F.C.I. was making payment of his wages and he had worked for 240 days in every calendar year with F.C.I.

5. Shri Suresh N. Bokade, the witness examined on behalf of the party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed tom work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security

guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 11.05.1991 was in the service of the party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the party No.1 sections 25 F and 25 H of the Act and party no 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970 ("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No.1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under Section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 and 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom. CR - 167 (Food Corporation of India *Vs* Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the party No. 1 and the workman and the party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security

contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the party no.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs*. National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> * * * *
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, 'Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross- examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produeed any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others *Vs.* Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do ....." . The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the prinicpal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor

to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 ICLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been

urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Couit in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 303/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा. सं. एल-22012/280/2003-आईआर (सीएम-II)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 303/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India,, and their workmen, received by the Central Government on 27/12/2013.

[F.No. L-22012/280/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/303/2003 Date: 29.11.2013.

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgatye,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar Ward No. 2,
Near Boudha Vihar, Post: Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Mohan Onkar Bodade, as per letter No.L-22012/280/2003-IR (CM-II) dated 08.12.2003, with the following schedule:-

> **"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Mohan Onkar Bodade, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohan Onkar Bodade, (the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 20.06.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee, of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and. absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the

employer of the workman and the services of the workman were never utilized by them as employer from 20.06.1992 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference. and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was engaged in F.C.I. through the contractor and no appointment order was issued by the F.C.I. to him and he has filed no document to show that F.C.I. was making payment of his wages..

5. Shri Suresh N. Bokade, the witness examined on behalf of the party no.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the party no.l has admitted the suggestions given on behalf the workman that the workman other security guards were deployed torn work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 20.06.1992 was in the service of the party no. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the party no.1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and party no 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970("Act,1970" in short) and as such,

the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No.1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under Section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman pIaced reliance on the decision reported in 2006(2) Bom.CR — 167 (Food Corporation of India *Vs.* Prashant Pandurang Ramteke 86 others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following ,order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
>
> ** ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 11.11.1990 to abolish the contract labour system FCI and directed to give employment to contract labours engaged by the management and party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-IILLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda Others *Vs.* Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of

contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do...". The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical Qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) of 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms

"Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification undet Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the

contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need

not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 178.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 289/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/232/2003-आई आर (सी एम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 289/2003) of the Cent.Govt. Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/232/2003-IR (CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/289/2003 Date: 29.11.2013.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani,
Nagpur - 440015.

Party No. 1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in

short), the Central Government has referred the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, Shri Suraj Ganpat Ganvir for adjudication, as per letter No. L-22012/232/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Suraj Ganpat Ganvir, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suraj Ganpath Ganvir ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 13.12.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 13.12.1993 to 14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between

them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contract given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim, though had filed in his evidence, on affidavit, he did not appear for his cross-examination, so, his such evidence cannot be taken in to consideration.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed to work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 13.12.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970 ("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other

security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/s 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No: 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under Section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with mala fide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola,. Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR - 167 (Food Corporation of India Vs. Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by

the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC 1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

From the evidence on record and the own admission of the workman in the statement of claim that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is

thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for. penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/- 9-5-1997(Cal): W.A. Nos. 345—354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bonr), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

> With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.
>
> From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official

gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food

Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 179.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 277/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/201/2003-आई आर (सी एम-II]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 277/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/201/2003 - IR(CM-II)]
M. K. SINGH , Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/277/2003 Date: 29.11.2013.

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur -440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar Ward No. 2,
Near Boudha Vihar, Post: Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Mt" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Suresh Adkuji Rarnteke for adjudication, as per letter No. L-22012/201/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Suresh Adkuji Ramtake, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Adkuji Ramtake, (`the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of

Party No. 1 from 27.09.1992 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 27.09.1992 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this

Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was engaged in F.C.I. through the contractor, "Bombay Industrial Security". The workman in his cross-examination has further admitted that he has not filed any document to show that F.C.I. was making payment of his wages and he had worked for 240 days in every calendar year with F.C.I.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed tom work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 27.09.1992 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition)Act,1970("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in

corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/s 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR - 167 (Food Corporation of India Vs Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security Contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other

facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross- examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Honble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985II LLOJ-4 (supra) the Hon. Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do...." The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore,

when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who

has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the

principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to• be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the

various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 180.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 275/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/195/2003-आई आर (सी एम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 275/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/ 12/2013.

[F. No.L-22012/195/2003 - IR(CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND-PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/275/2003 Date: 29.11.2013.

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur -440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgatye,
Mumbai - 400020.

Versus

Party No. 2 The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Suresh Sridhar Borakar for adjudication, as per letter No. L-22012/195/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Suresh Sridhar Borakar, security guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Sridhar Borakar, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 05.05.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in

colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 05.05.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment

and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that the contractor informed them about the vacancy in FCI and he took them to FCI. The workman in his cross-examination has further admitted that no appointment order was issued by the F.C.I. and he does not know English and there was no advertisement by F.C.I. for appointment of security guards. The workman has further admitted that it is correctly mentioned in the statement of claim that he was appointed through contractor.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. l has admitted the suggestions given on behalf the workman that the workman other security guards were deployed to work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 05.05.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No.1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition)Act,1970("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition, in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract

labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workmen placed reliance on the decision reported in 2006(2) Bom.CR -167 (Food Corporation of India Vs. Prashant Pandurang Ramteke and others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition .of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

"In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC 1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

XX XX XX XX

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. I as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and 'directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others *Vs.* Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that :—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... . " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal.): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal.): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant.): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom.) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom.), 1998 Lab IC 2571 (Cal.), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

"With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of

contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration."

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal

employer. This court in the case of Gammon India Limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/ 11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of

master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered.

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 78/2006) को प्रकाशित करती है, जो केंद्रीय सरकार को 27.12.2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/328/2005-आईआर (सी॰एम॰-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Gauri O/C Mine of Western Coalfields Ltd., Central Workshop Tadali of WCL, and their workmen, received by the Central Government on 27/12/2013

[F. No. L-22012/328/2005- IR (CM-II)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/78/2006 Date: 25.11.2013.

Party No. 1 The Sub Area Manager,
Gauri OCM of WCL, PO: Gauri,
Tahsil Rajura, Chandrapur.

The Chief General Manager,
Central Workshop Tadali of
WCL, Po.: Tadali, Chandrapur.

V/s.

Party No. 2 Shri Lomesh Khartad,
General Secretary,
Rashtriya Colliery Workers Congress,
Dr. Ambedkar Nagar,
Ballarpur, Po. & Tah. Ballarpur,
Chandraur (MS).

AWARD

(25th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Manoj Kumar S. Nandanwar, for adjudication, as per letter No. L-22012/328/2005-IR (CM-II) dated 09.10.2006, with the following schedule:—

> "Whether the action of the management of Gouri I Sub Area of Western Coalfields Limited in terminating the services of Shri Manoj Kumar Shankarrao Nandanwar w.e.f. 15.04.2001 is legal and justified? If not, to what relief is the concerned workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Rashtriya Colliery Mazdoor Congress," ("the union" in short) filed the statement of claim on behalf of the workman Shri Manoj Kumar Nandanwar, ("the workman" in short) and the management of WCL, ("Party No.1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered trade union under the Trade unions Act, 1926 and the Party No.1 is a government company owned and controlled by the Central Government and is a 'State' as per Article 12 of the Constitution of India and the provisions of the National Coal Wage Agreements ("the NCWAs" in short) are binding on the Party No.1 and provisions for employment of the dependent of the employees were made in NCWA-II and such provisions were made thereafter in all the NCWAs. It is further pleaded by the union that the workman was appointed as a general mazdoor cat-I, *vide* letter no. 746 dated 20.04.1997, being the dependent of Late Anand Rao Warhi Padwekar, clerk and during the period of vocational training of the workman at Vocational Training Centre, Dhooptala of Ballarpur Area, he was stopped from work without any written communication and the Personal Manager, Ballarpur Area wrote a letter bearing No. 371 dated 14.07.1997 to Smt. Kunda, the widow of Late Anand Rao Pahwekar to submit the marriage certificate and accordingly, the relevant documents were submitted to the management

and the workman never worked at Gouri sub-area or any other mine of Ballarpur Area even for a single day and he was allowed to continue and complete the vocational training and he was deputed to work at Central Workshop, Tadali, under the then Wani area and at the said Central workshop, the statutory 'B' form register, Forms 'A' and 'Q' of the workman were filled in, in which, his initial date of appointment was mentioned as 16.08.1997 and in the service register and in the forms, P.S.-3 and P.S.-4 required for Coal Mines Provident Funds and Pension Scheme and all other relevant registers, the date of appointment of the workman was mentioned as 16.08.1997 and the workman was promoted to the post of Trainee (Maintenance) in category-II, *w.e.f.* 01.01.1999, *vide* office order dated 02.05.1999.

The further case of the union is that a vague, false, baseless and fabricated charge sheet dated 15/17.08.1999 was submitted against the workman, by the Manager, Gouri OCM No.1, who was not competent to submit the same, without enclosing the lists of witnesses and documents relied on by the management and the allegations were levelled only basing on documents and the copies of the documents were never supplied to the workman and there were serious infirmities in the charge sheet and the workman had never worked at Gouri OCM No.1 and therefore, no employer-employee relationship existed between the workman and Party No.1 and the workman replied to the charge sheet *vide* his letter dated 24.08.1999, denying the charges and his reply was not examined by the Party No.1 and Party No.1 was prejudiced and was bent upon to victimize the workman, as evident from the facts that the Area Personnel Manager, Ballarpur constituted the enquiry and appointed enquiry officer and management representative, *vide* office order dated 7/8.09.2000, without endorsing a copy of the said order to the Manager, Gouri OCM No.1, the charge sheeting authority and the entire action was designed and planned with ulterior motive to victimize the workman and therefore, the entire action smacks of *malafide* and hence is illegal and the punishment was decided by the higher ups, so issuance of show cause notice etc. was an eyewash and the enquiry suffers from several infirmities and the documents were only produced by the management representative, but the same were not proved and as such, the same were without any evidentiary value and became unreliable and the Enquiry Officer acted merely as a recorder and acted mechanically without application of mind and the enquiry proceedings and the report are biased outcome of prejudice and are glaring example of violation of natural justice and the enquiry officer did not evaluate the evidence and the order of dismissal dated 14.04.2001 was issued by the Suptd. Mines/ Manager, Gouri OCM mechanically, without application of mind and under the influence of superior only and he was not competent to issue the order and the workman approached several times to the party no.1 for reinstatement, but without any result and the punishment, is too harsh and disproportionate. Prayer has been made for the reinstatement of the workman with continuity, full back wages and all consequential benefits.

3. The party no.1 has pleaded in the written statement *inter-alia* that one Anand Rao Warhi Padwekar was working as a clerk in Ballarpur 3 & 4 Pit Colliery and due to his death during employment, his legal heir was offered compassionate appointment and the workman came forward for employment claiming himself to be the son-in-law of deceased workman, Anand Rao and the workman submitted necessary application supported by documents for his appointment on compassionate ground and his application was forwarded for necessary action and on approval from the competent authority, he was issued with the appointment letter and the appointment order was issued by the Personnel Manager, Ballarpur area, where the deceased workman was working and the workman was offered vocational training at vocational training centre, Dhoptala, Ballarpur Area and the Personnel Manager, Ballarpur asked the widow of deceased Anand Rao to submit the marriage certificate issued by competent authority of their daughter with the workman and the workman in the meantime completed his training and he was given posting and after some time, it received the information that the workman fraudulently obtained the appointment, claiming himself to be the son-in-law of the deceased workman, Anand Rao, by giving false informations about his name, age, father's name and eligibility etc. and as such, charge sheet dated 5/17.08.1999 under clauses 26.1, 26.9 and 26.22 of the Standing Order was served on the workman and the workman submitted his reply to the said charge sheet and as the reply of the workman was found unsatisfactory, it was decided to conduct a departmental enquiry against him and by order dated 08.07.2000, Shri I.M. Chandak, Personnel Manager, Dhoptala Sub-Area was appointed as the enquiry officer and the enquiry officer issued notice of the enquiry to the workman and the workman filed an application to engage Shri Manohar Palvekar as his co-worker and he was allowed to engage Shri Palvekar as his co-worker and on 10.09.2000, on the prayer of the workman, the enquiry was adjourned to 18.09.2000 and 18.09.2000 also, the workman asked for adjournment, on the ground of absence of his co-worker, so the enquiry officer adjourned the enquiry to 10.10.2000 and the enquiry was conducted by giving fair opportunity to the workman and evidence was produced by the management representative in presence of the workman and the workman also examined himself in his defence and the enquiry officer on conclusion of the enquiry, submitted his report holding the workman guilty of the charges, to the competent authority and the disciplinary authority being satisfied with the findings of the enquiry officer and in the light of the charges proved against the workman, decided to terminate the services of the workman and the termination of the services of the workman is justified. It is

further pleaded by party no.1 that the union has no locus-standi to raise the present dispute, as it is not aware of functioning of such union and compassionate appointment was obtained by the workman fraudulently, by claiming himself as the dependent son-in-law of the deceased workman, Anand Rao and when such facts came to its knowledge, the departmental enquiry was initiated against the workman and any of its officers is entitled to initiate the disciplinary action against its employees and commission of misconduct by an employee cannot be cancelled or closed and granting of promotion or posting in different place of work does not absolve the employee from his misconduct and the charge sheet submitted against the workman was very specific and there is delay of five years in raising the dispute and as such, the reference is not maintainable on the ground of delay and latches and the workman is not entitled to any relief.

4. As this is a case of termination of the services of the workman, after holding of a departmental enquiry, the question of fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 20.09.2013, the enquiry was held to be legal, proper and in accordance with the principles of natural justice.

5. It is to be mentioned here that inspite of giving sufficient opportunities to the workman to appear and contest the case, the workman neither appeared nor contested the case and as such, on 23.08.2013, order was passed to proceed exparte against the workman.

6. Before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, by the Hon'ble Apex Court.

In a number of decisions, the Honble Apex Court have held that :—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *malafide* is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

7. On perusal of the materials on record, including the pleadings of the parties, it is found that the findings of the enquiry officer are based on the evidence adduced in the enquiry. It is also found that this is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of termination of the services of the workman cannot be said to be shocking disproportionate to the serious misconduct proved against the workman. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management of Gouri I Sub Area of Western Coalfields Limited in terminating the services of Shri Manoj Kumar Shankarrao Nandanwar w.e.f. 15.04.2001 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 23/2004) को प्रकाशित करती है, जो केंद्रीय सरकार को 27-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/61/2003-आईआर (सी॰एम॰-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2004) of the Cent. Govt. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Dhoptala Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 27/12/2013

[F. No. L-22012/61/2003- IR (CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/23/2004 Date: 25.11.2013.

Party No. 1 The Sub Area Manager,
Dhoptala Sub Area of WCL,
Post Sasti, Tah. Rajura,
Distt. Chandrapur (M.S).

V/s.

Party No. 2 Shri B.S. Ishwarkar,
District Advisor/Advocate,
Indian National Trade Union
Congress, Vijay Bhawan,
Vithal Mandir Ward,
Chandrapur (M.S).

AWARD

(25th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Dhoptala Sub Area of WCL and their workman, Shri Gajjala Hanumantoo Pocham, for adjudication, as per letter No.L-22012/61/2003-IR (CM-II) dated 30.01.2004, with the following schedule:—

> "Whether the action of the management in relation to Dhoptala Sub Area of WCL, in terminating the services of Shri Gajjala Hanumantoo Pocham, General Mazdoor *vide* office order no. WCL/SC/45B/96 dated 19.02.2002 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the petitioner, Smt. Vijaya Gajjala Hanumantoo, the widow of the deceased workman, Gajjala, ("the petitioner" in short) filed the statement of claim through the union, Indian National Trade Union Congress ("the union" in short) and the management of WCL ("party no. 1" in short) filed the written statement.

3. The case of the petitioner as presented by the union in the statement of claim is that Gajjala, the deceased husband of the petitioner was working as a General Mazdoor in Dhoptala Sub Area and he was terminated from services illegally *vide* order dated 19.02.2002 by Party No. 1, without any proper and fair enquiry and the termination of Gajjala was illegal, improper and without any show cause notice, letter or charge sheet and the so called domestic enquiry conducted exparte against deceased Gajjala was illegal and unfair and the order of termination from services was passed against the deceased workman without giving him any opportunity of submitting his explanation and he was not given the scope to cross-examine the witnesses or to adduce evidence in his defence and the enquiry papers were not supplied to him and he was not allowed to engage any co-worker and as such, the enquiry was illegal, improper, unfair and against the principles of natural justice and the punishment of dismissal from service is shockingly disproportionate, considering the past clean service record of 28 years of the deceased workman. The union has prayed to answer the reference in affirmative and to appoint Shri Chandra Mohan, the son of the deceased workman in place of his father in service, after declaring the termination order as illegal.

It is necessary to mention here that before the reference was made by the Government to this Tribunal for adjudication, the workman expired on 17.07.2003 and as such, the statement of claim was filed by his widow.

4. The Party No. 1 in the written statement has pleaded *inter alia* that the deceased workman, Gajjala was appointed on 30.10.1974 as a Badlee worker and he was regularized on 01.01.1991 and he was irregular in service from the very beginning and he was given ample opportunity to improve his attendance by not initiating any disciplinary action against him, but he did not show any interest in his work and continued to remain absent from duty without intimation and sanctioned leave and due to poor attendance and habitual absenteeism, he was issued with the charge sheet dated 15/18.03.1999 and as no reply was received from him, it was decided to conduct a departmental enquiry against him and accordingly, *vide* order dated 17/23.05.1999, Shri Y. Krishna Sepuri was appointed as the Enquiry Officer to conduct the enquiry and though the Enquiry Officer fixed the enquiry on 13.10.2000 and 30.11.2000, the workman did not appear, so the Enquiry Officer adjourned the enquiry to 25.12.2000 and the workman appeared in the enquiry on 25.12.2000 and requested for adjournment, so the next date of the enquiry was fixed to 29.12.2000 and on 29.12.2000, the workman again requested for adjournment and to fix the enquiry to 06.01.2001, on the ground of absence of his co-worker and as per the request of the workman, the enquiry was fixed to 06.01. 2001and on 06.01.2001, the workman submitted an application to adjourn the enquiry on the ground of absence of his co-worker and left the enquiry and the Presenting Officer objected to adjourn the enquiry and the Enquiry Officer passed orders to conduct the enquiry exparte, after finding that the workman deliberately avoiding to attend the enquiry and after closure of the enquiry, the Enquiry Officer submitted his enquiry report holding the workman guilty of the charges and the entire enquiry papers were placed before the Competent Authority and the Competent Authority agreeing with the findings of the Enquiry Officer, issued show cause notice dated 13/19.10.2001 alongwith the copy of the enquiry report and

after going through the enquiry proceedings and the representation to the show cause notice, the Competent Authority *vide* office order no. 1377 dated 05/30.11.2001 imposed the punishment of dismissal from services on the workman and the workman filed an appeal giving the undertaking to improve his attendance and considering the appeal, the workman was given a last chance to improve his attendance and allowed on duty *vide* letter dated 24/30.12.2001, but as the workman did not improve his attendance and remained unauthorized absent, his services were terminated by order dated 19.02.2002 and the punishment imposed on him was proportionate to the gravity of the misconduct committed by him and the departmental enquiry conducted against the workman was legal and in accordance with the principles of natural justice.

5. As this is a case of termination of the services of the workman after holding of a departmental enquiry, the question of fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 21.06.2013, the enquiry was held to be legal, proper and in accordance with the principles of natural justice.

6. It is necessary to mention here that inspite of giving sufficient opportunities to the petitioner to appear and make argument, the petitioner neither appeared nor made any argument, hence, on 25.10.2013, order was passed to proceed exparte against the petitioner.

7. Before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, by the Hon'ble Apex Court.

In a number of decisions, the Honble Apex Court have held that :—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *malafide* is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

8. On perusal of the materials on record, including the pleadings of the parties, it is found that the findings of the enquiry officer are based on the evidence adduced in the enquiry. It is also found that this is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct of unauthorized absenteeism has been proved against the workman in a properly conducted departmental enquiry. The punishment of termination of the services of the workman cannot be said to be shocking disproportionate to the serious misconduct proved against the workman. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management in relation to Dhoptala Sub Area of WCL, in terminating the services of Shri Gajjala Hanumantoo Pocham, General Mazdoor *vide* office order no. WCL/SC/45B/96 dated 19.02.2002 is legal and justified. The workman was not entitled to any relief. Hence, the applicant is also not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है, जो केंद्रीय सरकार को 27-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/119/2002—आईआर (सी॰एम॰-II)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Hindustan Lalpeth U/G Sub Area of WCL and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/119/2002 - IR(CM-II)]

M. K. SINGH, Section Officer.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/ 18/2003 Date: 13.11.2013.

Party No. 1 The Sub Area Manager,
Hindustan Lalpeth
U/G sub Area of WCL, Post- Lalpeth,
Dist.-Chandrapur (M.S.)
Chandrapur (M.S.)

Party No. 2 Shri Mallesh Kamtam, Secretary,
National Colliery Workers Congress,
Hinglaj Bhawan Mandir, Junona Chowk,
Chandrapur,
Post & Distt. Chandrapur (M.S.).

AWARD

(Dated: 13th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and subsection 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Hindustan Lalpeth U/G Sub Area of WCL and their workmen, Shri Kishor Mundi Bolambar and 36 others, for adjudication, as per letter No.L-22012/119/ 2002-IR (CM-II) dated 28.11.2002, with the following schedule:-

> "Whether the demand of the union that Kishor Mundi Bolamber and 36 others (as per list) be regularized in permanent employment of the management in relation to Hindustan Lalpeth U/G Sub Area of Western Coalfields Ltd. is legal and justified? If so, to what relief is the concerned persons entitled and from, what date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, National Colliery Workers Congress, ('the union' in short) filed the statement of claim on behalf of Shri Kishor Mundi Bolamber and 36 others, ('the workmen' in short) and the management of Hindustan Lalpeth U/G Sub Area of WCL, ("Party No. 1" in short) filed their written statement.

The case of the 37 workmen as presented by the union in the statement of claim is that it (union) is a registered Trade union under the Trade Unions Act, 1926 and party No.1 is a government company and is a state within Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five central Trade unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWAs" in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contracvention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been deliberated by JBCCI, known as NCWAs-I, II, III, IV, V, VI, and VII dated 11.12.1974, 11.08.1979, 27.07.1989, 19.01.1996, 23.12.2000 and 15.07.2005 with period of operation of the said NCWAs from 01.01.1975 to 31.12.1978, 01.01.1979 to 31.12.1982, 01.01.1983 to 31.12.1986, 01.01.1987 to 30.06.1991, 01.07.1991 to 30.06.1996, 01.07.1996 to 30.06.2001 and 01.02.2001 to 30.06.2006 respectively.

It is further pleaded by the union that Western Coalfields Limited in the states of Maharashtra and Madhya Pradesh is divided into 10 areas including Chandrapur and the Chief General Manager/General Manager is the Chief Executive of Chandrapur Area having its office at Mahakali Colliery and there are several Sub-areas under Chandrapur Sub Area and the Sub Areas are controlled by the Managers and under them, there are Suptd. of Mines/Manager at colliery/project level and the Sub-Area Manager, Hindusthan Lalpeth underground Sub-Area is the head of the underground Mines HLC mine no.1, HLC Mine no.3, Mana Incline and Nandgaon Incline etc and the provisions of Mines Act, 1952, Mines Rule, 1955, Coal Mines Regulations, 1957, Mines vocational Rules and Circulars and guide lines issued from time to time by the Director General of Mines Safety ("DGMS" in short) are applicable to the said Mines and for working of new sections and for drilling operations, permission of DGMS is required to be obtained by the management under the Coal Mines Regulation , 1957 and Chapter VI of the Mines Act, 1952 provides the maintenance of various records in respect of all persons employed in the mine and to keep their attendance etc in the prescribed forms, such as Form 'B', 'C', 'D' `E' etc.

It is also pleaded by the union that all the 37 workmen were employed as heavy vehicle drivers on Tipper/Dumpers for transportation of sand from river to bunkers of the underground mines of Lalpeth Sub-Area and the said work is permanent and perennial in nature and in order to avoid its liability, party No.1 created a smoke arrangement and veiled it to deprive the workmen of their legal right and dues, such as equal wages and other fringe benefits like the drivers on the rolls of party No.1 and the workmen were also engaged to transport sand to other bunkers of Mahakali colliery and Durgapur Rayatwari Colliery and the workmen

were entitled for regularisation in view of their continuity of service and as the workmen raised the industrial dispute, they were harassed by the party No.1 and the intermediates and standing instruction has been issued by the Government of India not to appoint contract labour normally on jobs of perennial nature and the workman are entitled for regularisation.

Prayer has been made by the union for regularisation of the workmen with retrospective effect and back wages.

3. The party No.1 in the written statement has pleaded *inter-alia* that the union remains only on papers, without having the minimum members in Chandrapur area and it has not complied the Statutory Provisions of India Trade Union Act, 1926 and by taking advantage of registration number of Dhanbad, it is picking up stray cases and raising the disputes in Chandrapur area and the workmen seem not to be the members of the union and as such, the union is not entitled to represent the workmen.

It is further pleaded by the party No.1 that all the 37 workmen were employed by a contractor, namely, M/s. Khandelwal Transport, as mentioned in FOC report of ALC (C) submitted to the Secretary, Ministry of Labour on 28.02.2002 and there was no relationship of employer and employee and on verification of the workmens' document No.3, it is to be noted that 27 contract workers had under gone vocational training for a period of 7 days during March, 1997 to April, 1997 and merely undergoing training cannot be the basis of claiming employment, which is against the provisions of its recruitment policy and after award of the job for a specified period to supply sand to a mine for stowing to the contractor, he engaged his own persons for excavating sand and transporting it to the mine and the Manager of the Mine had no control/supervision over the contract workers and there was no master and servant relationship between it and the workmen and it is well settled principle of law that regularisation is not a mode of recruitment and continuous working for a long period in absence of any statute or statutory rule by itself does not confer any right upon the employee to obtain a status to which he is otherwise entitled to and no equality can be claimed on the basis of illegality and it is also trite that illegality cannot be perpetuated and as the workmen were engaged by the contractor and there was never any relation of employee and employer between it and the workmen, the workmen are not entitled to any relief.

4. It is to be mentioned here that inspite of giving numerous chances to the petitioner to file rejoinder and to adduce evidence to prove its case, neither any rejoinder nor any evidence was adduced either by the union or the workmen. The union and so also the workmen did not appear in the case. Hence, on 05.08.2013, order was passed to proceed with the case exparte against the petitioner.

5. Party No.1 also did not adduce any oral evidence in this case.

6. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail.

In this case, neither the union nor the workmen appeared and contented the case. No evidence is also adduced either by the union or the workmen in support of the claim. So applying the settled principles as mentioned above to the case in hand, it is found that the reference cannot be answered in favour of the workmen and no relief can be granted to them, Hence, it is ordered:—

ORDER

The reference is answered in the negative. The 37 workmen as per list enclosed are not entitled to any relief.

J. P. CHAND, Presiding Officer

APPENDIX

Vide F.O.C. Report No.1(10)/2002-ID dated 28th February, 2002

No. of workmen

1. Shri Kishore Mundi Bolambar
2. Shri Ram Sewak Rain Narain Kavvap.
3. Shri Ram Das Mundi Rada Rufwar.
4. Shri Ramesh Malaiya Katul.
5. Shri Gajanan Kishan Gohine.
6. Shri Anil Kocham Bimanwar.
7. Shri Nagesh Malaiya Katul.
8. Shri Sanjal Rajaiya Irala.
9. Shri Palana Enkati Konda Gurla..
10. Shri Manik Samrao Kamble.
11. Shri Nairn Jalil Ahmed Saikh.
12 Shri Sriniwas Malaiya Dodalwar.
13 Shri Hanumantu Gatmalu Kondugo1a
14 Shri Shankar Bapo Babbar.
15. Shri Ankulu Gatomolu Kandugula
16. Shri Anand Raoji Morale.
17. Shri Sanjaya Lingaiyah Gudala.
18. Shri Chainram Gunu Tajne
19. Shri Kanchan Prasad.
20. Shri Nandi Gunu Shah.
21. Shri Yogesh Chandekar.
22. Shri Yubraj Bapanna Rangari

23. Shri Shyamlal Puranlal Jadav
24. Shri Pradip Lataro Motgare
25. Shri Bandu Laxman Tawad
26. Shri Jagdish Balaji Babore
27. Shri Ashok Chauhan
28. Shri Tulshiram Mahadeo Chikate
29. Shri Nand Kishore Madhaw Tengane
30. Shri Krishna Malialeo Mude
31. Shri Raju Abadi Dande
32 Shri Ramesh Mutej Durge
33. Shri Suresh Chandrika Sonekar
34. Shri Rajkumar Puranlal Jadave
35. Shri Suresh Sonekar
36. Shri Shankar Enkati Burdi
37. Shri Vasudeo Badiram Tipla,

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 258/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/160/2003-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 258/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/160/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/258/2003 Date: 29.11.2013.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate,
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar, Ward No. 2,
Near Boudha Vihar, Post: Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Rajesh Shriram Bombodkar for adjudication, as per letter No. L-22012/160/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Rajesh Shriram Bombodkar, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajesh Shriram Bombodkar, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 07.11.1992 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal

termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 07.11.1992 to 14.03.1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police personnel as security guards.

The further case of party No.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he has engaged in F.C.I. by the contractor, "Singh Security Services" and Singh Security Services was paying him his salary. The workman in his cross-examination has further admitted that wages was being paid to him by signing on revenue stamp affixed on acquaintance roll and the Zerox copy of the muster roll Ext. M- I, filed by the management is the true copy of the said acquaintance roll and Ext. M-II is the true copy of his attendance register maintained by Singh Security Services and at first he was working at Akola and he was asked by Bombay Industrial Security and Fire Services to work at Wardha instead of Akola and he was engaged by other contractors in FCI and he has not filed any document to show that he had worked for 240 days in every calendar year with F.C.I. and his engagement was without any advertisement by F.C.I. and the contractors were deciding to keep a person in job or not.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman and other security guards were deployed to work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 07.11.1992 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the party No.1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25F and 25H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970 ("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1

was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR — 167 (Food Corporation of India Vs Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no.1 that the workman was never appointed by party no.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party no.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no.1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the party no.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the party no.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others Vs. National Union Water Front Workers and Others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by

appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

XX XX XX XX

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through the contractor, Singh Security Services and after Singh Security Services, he was engaged by other contractors.

From the evidence on record and the own admission of the workman in the cross- examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:-

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore,

when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:-

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 to 1999, D/- 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who

has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of subsection (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the

principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd., 1991I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such Questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter no. U-23013/ 11/89/LW dated 28.05.92 of Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman

of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के प्रचाट (संदर्भ संख्या 263/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था ।

[फा॰ सं॰ एल-22012/165/2003-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 263/2003) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/165/2003-IR(CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/263/2003 Date: 29.11.2013.

Party No.1(a): The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b): The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Babarao Daduji Chahande for adjudication, as per letter No.L-22012/165/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Babarao Daduji Chahande, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Babarao Daduji Chande, ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.07.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party

No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Patty No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.07.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an

employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that the contractor informed them about the vacancy in FCI and he took them to F.C.I. and he does not know the name of the contractor. The workman in his cross-examination has further admitted that no appointment order was issued by the F.C.I. to him.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed torn work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 23.07.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition)Act,1970("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman

and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR - 167 (Food Corporation of India Vs Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter

within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

'Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for

whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m, D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India

Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates' progressive abolition to the extent contemplated by Section 10 of the Act.

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent. Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of

the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था ।

[फा॰ सं॰ एल-22012/24/2002-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2003) of the Cent.Govt Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Chandrapur Area of Western Coal Fields Ltd. and their workmen, received by the Central Government on 27/12/2013.

[F.No. L-22012/24/2002-IR(CM-II)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/19/2003 Date: 27.11.2013.

Party No.1: The Chief General Manager, Chandrapur Area of Western Coalfields Ltd. Post & Distt:- Chandrapur (MS).

Versus

Party No.2: Shri Suryapal Durgaprasad Awasti, Indira Rashtriya Kolya Khadan Kamgar Sangh, 2-CH Qrt. 3, Mahakali Colliery, Post & Distt:- Chandrapur (MS).

AWARD

(Dated: 27th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Suryapal Awasti, for adjudication, as per letter No.L-22012/24/2002-IR (CM-II) dated 28.11.2002, with the following schedule:-

> "Whether the action of the management of Chandrapur Area of Western Coalfields Ltd., in not protecting the pay of Shri Suryapal Durgaprasad Awasti Loader, Mahakali Colliery, in terms of the settlement dated 02.11.1991 and the office order dated 10.02.2000 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Surypal Awasti, (the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that it is a registered under the Trade Unions Act, 1926 and the Party No. 1 is a government company owned and controlled by the Central Government and is a "State" under Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five central Trade unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/ safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWAs" in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contravention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been deliberated by JBCCI, known as NCWAs-I, II, III, IV,

V, VI, and VII dated 11.12.1974, 11.08.1979, 27.07.1989, 19.01.1996, 23.12.2000 and 15.07.2005 with period of operation of the said NCWAs from 01.01.1975 to 31.12.1978, 01.01.1979 to 31.12.1982, 01.01.1983 to 31.12.1986, 01.01.1987 to 30.06.1991, 01.07.1991 to 30.06.1996, 01.07.1996 to 30.06.2001 and 01.02.2001 to 30.06.2006 respectively and the workman was appointed as a piece rated loader in group V-A on 26.10.1978 and a memorandum of settlement dated 02.11.1992 was arrived under section 12 (1) of the Act between the Party No.1 and their workmen represented by Rashtriya Koyla Khadan Mazdoor Sangh (INTUC) ("R.K.K.M.S." in short) and the terms of the said settlement have become the terms and conditions of service of the employees and are binding on the management and the employees and in terms of NCWA-V all the workmen are given minimum benefit of Rs. 235/- per month or Rs.9.04 per day inclusive of interim relief over and above the wages prescribed under NCWA-IV and the workman was getting 104.93 paise per day basic of group V-A of loader as Rs. 35.54 paise as special piece rate allowance, besides dearness etc in accordance with the provision of NCWA-V and the workman was transferred by Party No.1 from loader job to Trammer's job on surface sometime in January, 1999, but he was carrying the designation of loader piece rated group V-A and was getting protection of Group V-A basic and SPRA *i.e.* Rs. 104.93 + Rs. 35.54 P per day respectively till August, 1999 and party no.1 arbitrarily, whimsically and without any written order or notice reduced the wages of the workman and started paying him basic of Rs. 68.90 instead of Rs. 104.93 p per day and stopped payment of SPRA and the Suptd./ Manager of Mahakali colliery issued office order No. 1139 dated 22.06.2002 by which, the workman was converted from loader (piece rated worker) to time rated worker as Trammer in cat.-III and as per NCWA-VI, the basic of loaders was fixed at Rs. 203.69 p and SPRA of Rs. 3.14 per day by Party No.1 *w.e.f.* 01.07.1996 and as such, the workman was entitled to get protection of the basic wages of group V-A *i.e.* Rs.203.69 and SPRA from 01.07.1996 to 22.06.2002 and so also, on and from 22.06.2002 and all consequential benefits and inspite of his representations, Party No.1 did not protect his wages, even though, such protection was given by Party No.1 to other employees.

The union had prayed to give the workman the protection of his wages of loader group V-A *w.e.f.* 01.09.1992.

3. The Party No.1 in the written statement has pleaded *inter-alia* that the workman was working as a loader at Mahakali colliery and he applied in writing vide his letter dated 06.10.1998 for putting him on light job, which was given to him as because, he had received injury while on duty on 18.06.1998 and again on 17.01.1999, 18.01.1999 and 09.02.1999, the workman applied for a regular and permanent job in time rated, on the ground of his having constant pain in his waist and weak eye sight and the Manager/ Superintendent of Mines *vide* letter dated 23.03.1999 gave a detailed reply to the workman explaining the position of his alleged accident and also conveying that it would not be possible to post him in light time rated job and to pay the wages of a loader and in the meanwhile, whenever the workman was deployed in time rated category, he was paid the wages of a loader, as the same was on interim arrangement and since the arrangement could not be continued indefinitely and so also keeping in view the policy decision of the company, the workman was ultimately placed in the regular post of trammer in cat.III *w.e.f.* 22.06.2002 and while placing him in cat.III, his wage was fixed at the midpoint of the said category and along with the workman, 25 more employees were brought to daily rate from the job of loader and they were also given similar treatment.

It is further pleaded by the Party No.1 that the workman had been claiming a series of accidents to him at almost regular interval, but he had never been declared medically unfit for his normal duty and a careful study of his various representations on the subject revealed that his pleas were more pretentious than realities and even then also, the management being sympathetic, accommodated him from time to time in alternative light jobs to the extent possible and protested his wages as a loader and for dealing with the cases of employees involved in the accident, while on duty, a policy decision was taken at company level and circulated to the areas and in accordance with the circular, till a loader injured on duty was not regularly and permanently deployed in time rated job, he was to be paid group wages. However, on his permanent absorption in time rated on his option, he was to be placed in time rated category at its initial basic and such guidelines has neither been cancelled nor withdrawn and normally, it is being pleaded by the unions including the one involved in this reference that in accordance with the settlement dated 02.11.1992, all loaders, who are converted from piece rated to time rated should be given protection of group wages irrespective of their request for conversion and such interpretation is not correct and at para 1(I) of the said settlement which is based on humanitarian consideration, the management had agreed to provide alternative light job to the employee particularly to loaders, who are physically weak due to old age, sickness or injured on duty, irrespective of vacancies and in such cases, there was no stipulation of protection of wage and the case of the workman falls specifically under this clause and under para 1(2) of the settlement, the management agreed to till up 50% of the vacancies accruing in time rated categories amongst the piece rated workers, who have completed at least 15 years of service and following para 1(2), in para 1(3), it was agreed that management shall on conversion from piece rated to time rated, protect the group wage of the piece rated workers and application of para 1(3) specifically confined to cases covered by para 1(2) and since there were controversies about the

interpretations and implementation of the settlement, the RKKMS union, with whom the settlement dated 02.11.1992 was signed and the management modified the settlement *vide* agreement dated 31.10.1995 and as per the modified settlement, such piece rated workers, who opt for time rated jobs are to be placed in the corresponding category at the mid point of the wage scale and as the workman opted himself for time rate, he was rightly place at midpoint of time rate on being permanently deployed in the said post and the agreement dated 31.10.1995 has not been challenged by any union/workers and the same continues to remain in force and unless the same is challenged and declared null and void, through appropriate proceedings under the Act, its applicability cannot be questioned under a proceeding like this and when a piece rated loader opts for a time rated job in lower grade and is actually working in the lower category, he cannot valid claim the benefits of the piece rated job including wages and the workman is therefore not entitled to any relief.

4. In the rejoinder, it is pleaded by the union that the case of the workman is a case of injury on duty and in view of the settlement dated 02.11.1992, he is entitled for the protection of his wages and management has misrepresented the facts and interpretations of the settlement dated 02.11.1992 and the workman is entitled for protection of his wages.

5. Besides placing reliance on documents, both the parties have led oral evidence in support of their respective claims.

On behalf of the union, the workman and one Shri Dinesh Pandurang Teleng have been examined as the two witnesses, where as shri Shrikrishna Shelke has been examined as the only witness on behalf of the Party No. 1. The examination-in-chief of the witnesses for the parties is on affidavit and they have reiterated the facts mentioned in the statement of claim and written statement respectively in their respective evidence on affidavit.

In his cross-examination, the workman has admitted that Exts. M-I toM-IV are the copies of the letters submitted by him to Party No. 1.

6. It is necessary to mention here that during the pendency of the reference, the workman expired. Advocate for the workman intimated the death of the workman on 16.07.2003, by filing a pursis. Though the reference was adjourned twice and sufficient opportunity was given for substitution of the legal heirs of the deceased workman, the legal heirs of the workman if any were not substituted. As none appeared on behalf of the union to contest the case, the evidence of the witness for the Party No.1 remained unchallenged. It is also to be mentioned that as parties did not appear on 19.09.2013 and 28.10.2013, the case was closed and was fixed for award.

7. Perused the record including the office order dated 10.02.2000, settlement dated 02.11.1992 and modification dated 31.10.1995. So far the office order dated 10.02.2000 is concerned, the same relates to the cases of demoted employees and not to employees converted from piece rated to time rated. As the case of the deceased workman was not a case of demotion to lower category, the office order dated 10.02.2000 had no application to his case.

On perusal of the materials on record, it is found that there is nothing on record to show that the workman was declared medically unfit to do his original job of loader. It is also found that on the request of the workman as per Exts. M-I to M-Iv, the workman was given permanent light job and as posted as Trammer cat.III. Hence, there was no illegality in fixing the wages of the workman at midpoint of trammer category-III and not protecting his wages of loader. Hence, it is ordered:—

ORDER

The action of the management of Chandrapur Area of Western Coalfields Ltd., in not protecting the pay of Shri Suryapal Durgaprasad Awasti Loader, Mahakali Colliery, in terms of the settlement dated 02.11.1992 and the office order dated 10.02.2000 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer.

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायाल नागपुर के पंचाट (संदर्भ संख्या 31/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/179/2012-आई आर (सी-एम-II)]
एम॰ के॰ सिंह, अुनभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/179/2012 - IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/31/2012 Date: 18.11.2013.

Party No. 1 : The Suptd. of Mines/Manager, Western Coalfields Ltd., Patansaongi Mine, Tq. Saoner, Distt. Nagpur.

Party No. 2 : The Assistant General Secretary, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), 604, Giripeth, Nagpur.

ORDER

(Dated: 18th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their workman, Shri C.G. Moje, for adjudication, as per letter No.L-22012/179/2012-IR (CM-II) dated 30.11.2012, with the following schedule:—

> "Whether the action of the management of Western Coalfields Ltd., Patansaongi Mine TQ Saoner Distt. Nagpur through its Suptd. of Mines/Manager in terminating the services of Sh. C.G. Moje, an Ex-Clerk Grade-I of Patansaongi Mines of WCL *w.e.f.* 26.08.2006 is legal and justified. To what extent, the workman is entitled for relief"

This order arises out of the application filed by the management for dismissal of the reference as not maintainable or infructuous.

2. The case of the management is that it is the admitted fact that the services of the workman was terminated *vide* order dated 25.08.2006 *w.e.f.* 26.08.2006, after conducting of the departmental enquiry against him and the departmental appeal filed by the workman against the order of punishment of his termination from services was rejected on 25.05.2007 and the Hon'ble High Court in W.P. No. 2986/2008, by order dated 08.08.2008, set aside the order of the appellate authority rejecting the appeal and the workman was permitted to file fresh departmental appeal and the fresh departmental appeal filed by the workman was partly allowed *vide* order dated 21.11.2008 and the workman did not challenge the order dated 21.11.2008 and the same attained finality and by order dated 22.11.2008, the workman was reappointed as General Mazdoor Category-I with initial basic pay, with continuity, but without back wages with a direction to post him outside Nagpur and the workman did not join duties in terms of the order dated 21.11.2008 and thereafter, a settlement was arrived at by it and the workman in terms of the order dated 21.11.2008 in form-H on 31.12.2009 and the settlement was duly signed by the parties and after signing the said settlement, the workman joined in service and he is performing his duties till date and the workman with an after- thought, raised the dispute before the ALC (Central), Nagpur for the first time after a gap of almost two years, on 17.06.2011, challenging the termination order dated 25.08.2006 and even though, it (management) had brought the above facts to the notice of the ALC (Central), the ALC submitted the failure report to the Central Government and inspite of the fact that the termination order was no more in existence in view of the order dated 21.11.2008 and settlement dated 31.12.2009, this reference was made by the Central Government by letter dated 31.11.2012 and the workman has filed the statement of claim on 03.04.2013 (the statement of claim was actually filed on 22.04.2013), challenging the order of his dismissal from services *w.e.f.* 26.08.2006 (the workman in his statement of claim has wrongly mentioned the date of his dismissal from services as 24.08.2006 instead of 26.08.2006) and the order dated 25.08.2006 terminating the services of the workman *w.e.f.* 26.08.2006 is no more in existence, the same being modified by the order of the appellate authority dated 21.11.2008 and in terms of the settlement dated 31.12.2009, there could not be any reference for adjudication by this Tribunal and therefore, the reference is liable to be rejected as not maintainable or to be rejected as infructous.

3. The workman in his say to the application has pleaded that the application has been filed only to prolong the reference and when the reference has been made by the appropriate Government to this Tribunal for adjudication and to pass the award in terms of the schedule of reference, the Tribunal has to adjudicate the dispute and to pass the award on merit and the management is not entitled to claim the dismissal of the reference and for that the application is liable to be rejected. In his say, the workman has further contented that the result of the departmental appeal preferred by him against the order of his termination from services rejected on 25.05.2007 was not communicated to him and he had filed writ petition No. 2986/2008 and as per the orders of the Hon'ble High Court passed in writ petition No. 2986/2008, he filed the departmental appeal afresh and the same was allowed in part by the Appellate Authority *vide* order dated 21.11.2008 and he challenged the order passed by the Appellate Authority before the Chairman-Cum-Managing Director on 20.08.2009 and also filed the writ petition No. 2986/2008 and the contentions raised by the management are totally false and misleading and the claim of the management that the reference is not maintainable is baseless, far from the truth and bad in law and if it is so, then the government would have never referred the dispute for adjudication and the reference is required to be decided on merit after filing of the written statement by the management and the application is liable to be rejected.

4. On perusal of the statement of claim, documents filed by the workman, the contentions raised in the application filed by the management and in the reply of the workman to the application and submissions made by the learned advocates for the parties, the following admitted facts are found:—

(a) Charge sheet dated 24.07.2004 was served on the workman.

(b) A departmental enquiry was conducted by the management against the workman to make enquiry on the charges levelled against him in the charge sheet dated 24.07.2004.

(c) The workman was terminated from the services as per order dated 25.08.2006, *w.e.f.* 26.08.2006.

(d) The workman preferred an appeal against the order of punishment before the Appellate authority, but the appeal was dismissed.

(e) The workman filed writ petition No. 2986 of 2008, before the Hon'ble High Court, Nagpur Bench, Nagpur, challenging the order of dismissal and rejection of his appeal dated 01.09.2006.

(f) Writ petition 2986/2008 was disposed of by the Hon'ble Court by order dated 08.08.2008, with a direction to the management to consider the appeal of the workman afresh.

(g) The management considered the appeal filed by the workman afresh and by order dated 21.11.2008 the appeal of the workman was allowed in part and the appellate authority by order dated 21. 11.2008 passed orders for the reappointment of the workman as a General Mazdoor, Category-I with initial basic pay and with continuity in service, but without back wages and to post him outside Nagpur.

(h) There was a settlement between the workman and the management on 31.12.2009.

(i) In view of the settlement dated 31.12.2009, the workman joined the service of the management.

(j) After joining the service, for the first time, the workman raised the dispute about termination of his service, on 17.06.2011.

(k) The reference has been made by the Central Government by letter dated 30.11.2012 for adjudication to this Tribunal with the schedule :—

"Whether the action of the management of Western Coalfields Ltd., Patansaongi Mine TQ Saoner Distt. Nagpur through its Suptd. of Mines/Manager in terminating the services of Sh. C.G. Moje, an Ex-Clerk Grade-I of Patansaongi Mines of WCL *w.e.f.* 26.08.2006 is legal and justified. To what extent, the workman is entitled for relief?"

5. It is to be mentioned here that it is well settled by the Hon'ble Apex Court in a number of decisions that common law principles of estoppels, waiver and acquiescence are applicable in an industrial adjudication.

6. In this case, it is crystal clear from the admitted facts as mentioned above that the workman had approached the Hon'ble High Court Nagpur Bench, Nagpur Challenging the legality of the order of his termination *w.e.f.* 26.08.2006 in writ petition No. 2986/2008 and as per the direction of the Hon'ble High Court, the appeal filed by the workman a fresh was considered by the concerned appellate authority and the appellate authority allowed the appeal in part and as per order dated 21.11.2008, the appellate authority directed the appointment of the workman as General Mazdoor, Category-I and the workman also signed a settlement with the management in Form-H on 31.12.2009 and then joined in services and is continuing in service. It is also not disputed that the dispute was raised before the ALC by the workman for the first time on 17.06.2011, on which date the impugned order dated 25.08.2007, terminating the services of the workman *w.e.f.* 26.08.2007 was not in existence. Hence, the claim of the workman challenging the order of his termination *w.e.f.* 26.08.2007 is hit by the provision of estoppels, waiver and acquiescence and not maintainable.

Hence, the application filed by the management is allowed. The reference is disposed of as not maintainable and as such, the workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 89/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/399/2003-आई आर (सी-एम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 89/2004) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Wani Area Ghugus of Western Coalfields Ltd., and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/399/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/89/2004 Date: 22.11.2013.

Party No. 1 The Addl. General Manager,(Operation), Wani Area Ghugus of Western Coalfields Ltd., Po. Ghugus Colliery, Tab. & Distt. Chandrapur. (MS).

Versus

Party No. 2 Sh. Lomesh Khartad, General Secretary, National Colliery Workers Congress, Dr. Ambedkar Nagar, Ballarpur, Po. & Tab. Ballarpur, Distt.Chandrapur.

AWARD

(Dated: 22nd November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and the applicant, Shri Gajanan Sadashiv Gaurkar, for adjudication, as per letter No.L-22012/399/2003-IR (CM-II) dated 04.10.2004, with the following schedule:—

> "Whether the action of the management in relation to Wani Area Ghugus of WCL not providing employment to Shri Gajanan Sadashiv Gaurkar, the dependent of Late Namdeo Ganpat Wararkar, Watchman, Nakoda Incline of Wani Area WCL within two months of making the application as provided under Implementation Instruction No. 18 dated 01.11.1979 under the NCWA-II is legal & justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "National Colliery Workers Congress", (the union" in short), filed the statement of claim on behalf of the applicant Shri Gajanan Sadashiv Gaurkar and the management of WCL, ("Party No. 1" in short) filed its written statement.

The case of the applicant as projected by the union in the statement of claim is that it (union) is a registered Trade Union under the Trade Unions Act, 1926 and Party No.1 is a government company and is a state within Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five central Trade Unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/ safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWAs" in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contravention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been deliberated by JBCCI, known as NCWAs-I, II, III, IV, V, VI, and VII dated 11.12.1974, 11.08.1979, 27.07.1989, 19.01.1996, 23.12.2000 and 15.07.2005 with period of operation of the said NCWAs from 01.01.1975 to 31.12.1978, 01.01.1979 to 31.12.1982, 01.01.1983 to 31.12.1986, 01.01.1987 to 30.06.1991, 01.07.1991 to 30.06.1996, 01.07.1996 to 30.06.2001 and 01.02.2001 to 30.06.2006 respectively.

The further case as presented is that deceased Ganpat Wararkar was a permanent workman at Nakoda Incline and was working as a Watchman and he died on 20.07.1998, while he was in service and the family members of the deceased workman informed the Party No.1 about the death of the workman and on the basis of records, Party No.1 struck off his name from the rolls *vide* office order No. 2377 dated 25.07.1998 and under NCWA-II, the Secretary JBCCI issued implementation instruction No. 18 dated 01.11.1979 regarding provisions of employment to dependent of deceased employees within two months of receipt of application by the management and the applicant, the son-in-law of the deceased workman applied for employment alongwith the required documents and the Senior Personnel Officer (IR), Nagpur *vide* letter No. 1116 dated 22/25.04.2000 asked the Area Personnel Manager, Wani Area for some more papers and the said documents were submitted by the applicant and the Personnel Manager (IR) Wani Area again asked for some records from Manager, Nakoda Incline *vide* letter No. 89 dated 25/26.11.2001 relating to the issue of employment of the applicant and its (union) President took up the case of the applicant with the Director (Personnel) of Party No.1 vide letter dated 27.08.2003, but party no.1 neither considered the case of the applicant nor gave any reply and Party No.1 on the pretext of one or the other, delayed and deprived the applicant from employment and Party No.1 issued letter No. 975 dated 31/22.11.2003 asking for some more documents and the applicant submitted the desired documents *vide* his letter 01.12.2003 addressed to Senior Personnel Manager and even then, as there was no further response from the Director (Personnel) of Party No.1, its President took up the matter with the Chairman-Cum-Managing Director *vide* letter dated 05.12.2003, which also remained unreplied. It is further pleaded by the union that the senior Personnel Manager,

Gughus again asked for the death certificate of the deceased workman and his son *vide* letter No. 1060 dated 12.12.2003, which were already demanded earlier, however, the applicant submitted the same again and still then, as no employment was given to the workman, the applicant raised the dispute before the ALC (C), Nagpur and on failure of the conciliation, failure repot was submitted to the Central Government and the Central Government referred the dispute for adjudication to this Tribunal. It is also pleaded by the union that number of employments were given by the Party No.1 from 86-87 to 2004-2005 to the dependents of the employees including son-in laws, under the specific provision of "social security' of NCWAs, but Party No.1 did not provide employment to the workman or the widow of the deceased workman and even did not provide monetary compensation to the widow of the deceased workman.

The union has prayed to direct the Party No.1 to give employment to the applicant and to pay monetary compensation to the widow of the deceased workman from two months after submission of the application by the applicant till the actual date of giving employment to the applicant.

3. The Party No.1 in the written statement has pleaded *inter-alia* that the applicant is not a workman as mentioned by the Central Government in the Schedule of reference and the applicant cannot be termed as a workman and implementation instruction No. 18 dated 01.11.1979 under NCWA-II has lost its value, as NCWA-II itself has been superseded by NCWAs-III, IV, V, VI and VII, wherein, the provision with regard to providing employment to dependents have undergone changes and even otherwise also, implementation instruction no. 18 contemplates clear and undisputed cases where the status of the dependant is not questioned and in this case, it is disputed as to whether the applicant was the legally dependant of the deceased workman. It is further pleaded by the Party No.1 that the raising of the dispute and the reference of the same by the Ministry for adjudication was/is premature in view of the fact that the claim of the applicant was processed by the local area management for forwarding the same to the headquarters at which level, providing employment to dependant is decided and due to such reference, further action by it on the application of the applicant is kept in abeyance and as it has not finally rejected or accepted the claim, the question of raising an industrial dispute and its maintainability does not arise and the union which has raise the dispute is registered at Dhanbad in the State of Jharkhand and the dispute has been raised by one Shri Lomesh Khartad as the General Secretary of the union and as shri Khartad is not elected as the General Secretary of the union in accordance with the constitution, he has no *locus standi* to raise the instant dispute and the union is not a union of the workman of Gughus and there is no community of interest between the workers of Ghugus and the applicant on whose behalf the dispute has been raised and as such, the union is not entitled to raise the dispute and the dispute is not an industrial dispute.

The further case of Party No.1 is that on the death of the workman, Late Namdeo Ganpat Wararkar on 20.07.1998, his name was struck off from the rolls *vide* office order dated 25.07.1998 and according to the records available with it, the deceased workman apart from his widow had three daughters and one son, and it was learnt that the son of the deceased workman pre-deceased the workman and all his three daughters are married and are living with their respective husbands' family and at the time of the death of the workman none of his daughters or son-in-laws was staying with him and none of them claimed employment in his place for employment and widow of the workman submitted application for payment of gratuity and she was paid 100% amount and it was also learnt that the 2nd daughter, Saraswati was married to the applicant on 20.05.1991, nearly seven years prior to the death of the deceased workman and it was neither certified nor any documentary proof was furnished to show that the applicant was staying with the deceased workman at the time of his death and almost wholly dependent upon him and the applicant was not dependent upon the deceased workman and this was made only on 03.02.2002, after a gap of about four years by the applicant and employment was claimed only on the basis of the relationship of father-in-law / Son-in-law and it was not claimed that the applicant was wholly dependent upon his father-in-law and the marriage certificate of the applicant also indicated that he was already employed as a mazdoor at the time of the marriage and in view of clause 9.3.3 of NCWA-VI, the direct dependent, the widow being available, the son-in-law being an indirect dependant is not eligible for employment and the applicant was not wholly dependent upon his father-in-law at the time of his death and since, the issue of providing employment to the widow is not under reference, it does not want to go in detail about it. It is also pleaded by Party No.1 that since the case of the applicant is a complicated and unusual case and needed through scrutiny of documents and had to be processed to different authorities. What time was consumed was procedural and not deliberate and the applicant himself is responsible for the delay as he submitted his application in February, 2002, four years after the death of the deceased workman and the widow of the deceased workman has not preferred any claim either for her employment or monetary compensation and the applicant is not entitle to any relief.

4. It is to be mentioned here that even though sufficient opportunities were given to the union and so also the applicant to file rejoinder and adduce evidence on affidavit in support of the claim raised in the statement of claim, neither any rejoinder was filed nor any evidence was adduced and lastly, on 21.08.2013, order was passed to proceed *ex-parte* against the applicant.

5. As neither the union nor the applicant has adduced any evidence in support of the claim, the claim must fail and on that score, the reference cannot be answered in favour of the applicant and no relief can be granted in favour of the applicant.

6. Moreover, it is clear from clause 9.3.3 of NCWA-VI that providing of employment to a son-in-law and that too residing with the deceased and almost wholly dependent on the earnings of the deceased is to be considered, only when no direct dependent *i.e.* wife/ husband as the case may be, unmarried daughter, son and legally adopted son is available for employment. In this case, it is admitted that the wife of the deceased workman is very much alive and she is a direct dependent of the deceased workman. On that basis also, the applicant is not entitled for consideration for providing of employment to him. It is well settled that the Tribunal cannot go beyond the schedule of reference or matters incidental to the same. In this case, the reference has been made to consider the legality or otherwise of not providing employment to him within two months of the application as per Implementation Instruction No. 18 dated 01.11.1979. So, the matter of providing employment or payment of monetary compensation to the wife of the deceased workman cannot be considered. Hence, it is ordered:—

ORDER

The action of the management in relation to Wani Area Ghugus of WCL not providing employment to Shri Gajanan Sadashiv Gaurkar, the dependent of Late Namdeo Ganpat Wararkar, Watchman, Nakoda Incline of Wani Area WCL is legal & justified. The applicant is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 118/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/398/2003-आई आर (सी-एम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 118/2004) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Dhoptala Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/398/2003 - IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/118/2004 Date: 27.11.2013.

Party No.1: The Sub Area Manager,
Dhoptala Sub Area of WCL,
Post: Sasti, Tah. Rajura,
Distt. Chandrapur.

V/s.

Party No.2 Vijay M. Raipure, (Dead)
Substitued by
1: Smt. Sashikala w/o. Vijay Markandi Raipure, age 41 yrs.
2: Sandip Vijay Raipure, age 26 Years Son
3: Ajay Vijay Raipur, age 20 yrs. Son
4: Deepa Vijay Raipure age 12 Years, daughter
Babupeth Ward, Chandrapur.

AWARD

(27th November, 2013)

In exercise of the powers conferred by clause (d) of, sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Vijay Raipure, for adjudication, as per letter No.L-22012/398/2003-IR (CM-II) dated 03.11.2004, with the following schedule:—

> "Whether the action of the management in relation to Dhoptala Sub Area of WCL in terminating the service of Shri Vijay Markandi Raipure, Loader, Sasti Colliery *vide* order No. WCL/BA/DSA/SC/45-*B/I*286 dated 23/24.12.1996 is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "National colliery workers congress", ("the union" in short) filed the statement of claim on behalf of the workman Shri Vijay Raipure, ("the workman" in short) and the management of WCL, ("Party No.1" in short) filed the written statement.

The case as projected in the statement of claim by the union on behalf of the deceased workman was that it (union) is a registered trade union under the Trade Unions

Act,1926 and the Party No.1 is a government company owned and controlled by the Central Government and is a State, as per Article 12 of the Constitution of India and the management of Party No.1 is not competent to resort the change in service conditions, wage structures, monetary benefits and other service conditions provided to the workers unilaterally, in contravention of the provisions contained in the National Coal Wage Agreements ("the NCWA" in short) and so far seven NCWAs have been signed and the provisions of employment to the dependent were made in NCWA II and thereafter in all subsequent NCWAs and on the basis of such provisions, employment to dependent of the employees is being given and the provisions contained in NCWAs have become the terms and conditions of service and the said provisions cannot be interpreted unilaterally by the Party No.1 and the provisions of "Employment to Dependents" is covered under Chapter "Social Security" of NCWAs II to VII and it is provided that "Employment would be provided to one dependent of the workers who are disabled permanently and also those who die while in service" and there is also provision for monetary compensation to female dependents.

The union has further pleaded that on 02.11.1992, there was a settlement between the management and the union, RKKMS (INTUC), before the Regional Labour Commissioner and in the said settlement, it was provided that the management shall provide alternatives light job to the employees, particularly to loaders, who are physically weak due to their old age, sickness or IOD, irrespective of vacancies and management shall fill up 50% vacancies arising out of natural wastage in Time rated/monthly rated category/grade from amongst the piece rated workers, who have completed at least 15 years of service.

It is further pleaded by the union that the deceased workman was appointed as a loader on 10.04.1980 and he had put in unblemished continuous service and a vague charge sheet bearing No. 684 dated 27.08.1998 was issued against him on the allegation of remaining absence from duty, by the Suptd. Mines/Manager, Sasti Colliery and alongwith the charge sheet, list of documents and list of witnesses were not supplied and dates of absence were not specified, so the charge sheet was vague and the enquiry proceedings and action taken by Party No.1 on the basis of such defective and vague charge sheet were illegal and the same is liable to be quashed and the workman replied to the charge sheet, denying the charges and specifically mentioning about his remaining sick and taking medicine and that his absence if any was beyond his control and due to sufficient cause and the same was not deliberate or intentional, but Party No.1 did not consider the same and initiated the departmental proceedings and the entire action, such as enquiry proceedings, enquiry report and action taken thereon were prejudicial, mechanical and without application of mind and the workman was dismissed *vide* letter No. 1236 dated 22/24.12.1994 and the order of dismissal suffers from serious infirmities and the workman during the conciliation proceeding died.

The union has prayed to declare the action of the Party No.1 in terminating the services of the deceased workman as illegal and to hold the workman to be in service till his death and his family members to be entitled to receive the wages and all consequential benefits from the date of dismissal of the workman till his death and either to give monetary benefit to the wife of the deceased workman or to give employment to one of his dependents, as per the provisions of the NCWA-VII.

3. The Party No.1 in the written statement have pleaded *inter-alia* that the reference was made by the Ministry relating to a dead employee and there is no provision in the Act to refer the case of a dead person for adjudication and as such, the reference is *ab-initio* void and bad in law and not maintainable.

It is further pleaded by Party No.1 that the deceased workman was working as a casual loader at Sasti Colliery at the time of termination of his services, but in the terms of reference, his designation has been mentioned as a regular loader, which shows that the reference has been made in a mechanical manner by the Ministry and the workman was appointed as a casual loader on 10.04.1980 at Sasti Colliery and he had been consistently negligent in his duty, so much so that during 1985 to 1994, he did not put in the required attendance, in order to qualify for being regularized as a permanent loader and his attendance and job performance for the years 1992 to 1995 was also poor and though several letters of caution for improvement of his performance were issued to the workman, all of them fell to his deaf ears and considering the above facts, the workman was issued with the charge sheet on 27.08.1995, in which, the details of his performance and attendance were specifically mentioned and the charges were not vague and he was asked to submit his written explanation and the explanation of the workman to the charge sheet was received on 07.09.1995 and the workman did not demand any list of documents and witnesses at any time and there is no practice or laid down procedure for supply of list to documents and witnesses and the explanation of the workman was examined and as the same was found not to be satisfactory, the departmental enquiry was ordered and Shri A.J. Reddy, the Dy. Personnel Manager, Dhoptala Sub-Area was appointed as the enquiry officer as per office letter dated 16/23.10.1995 and the enquiry officer held the enquiry after due notice to the parties and the workman availed the assistance of a co-worker in the enquiry and the enquiry was held on several dates and on most of the dates, the enquiry had to be adjourned for the reasons attributed to the workman and though being asked by the enquiry officer, the workman admitted the charges, he wanted to explain the position in detail and he gave detailed

reasons of his absence by stating that due to consistent ill health and domestic problems, he had not been able to attend his duty regularly and had to remain absent and both parties submitted their documents in support of their respective stands in the enquiry and the enquiry was closed with the consent of the parties and the enquiry officer submitted his detailed report, holding the workman guilty of the charges levelled against him and a copy of the enquiry report was given to the workman for his representation and the workman submitted his written explanation and the same was duly considered and found unsatisfactory and considering the seriousness of the misconduct and his past records, his services were terminated *vide* office order dated 23/24.12.1996 with the approval of the competent authority and the enquiry held against the workman was fair and proper and the punishment was also legal and proper and the same was not shockingly disproportionate to the charges and as the deceased workman was not entitled to any relief, his legal heirs are not entitled to any relief.

4. As this is a case of termination of the services of the workman after holding of a departmental enquiry, the question of fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 29.08.2013, the enquiry was held to be legal, proper and in accordance with the principles of natural justice.

5. It is to be mentioned here that inspite of giving sufficient opportunities to the applicants to appear and contest the case, neither they appeared nor contested the case and as such, on 02.08.2013, order was passed to proceed exparte against them.

6. Before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings as settled by the Hon'b le Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:-

> "The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *malafide* is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

7. On perusal of the materials on record, including the pleadings of the parties, it is found that the findings of the enquiry officer are based on the evidence adduced in the enquiry. It is also found that this is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of termination of the services of the workman cannot be said to be shocking disproportionate to the serious misconduct proved against the workman. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management in relation to Dhoptala Sub Area of WCL in terminating the service of Shri Vijay Markandi Raipure, Loader, Sasti Colliery *vide* order No. WCL/ BA/DSA/SC/45-B/1286 dated 23/24.12.1996 is legal and justified. The workman was not entitled to any relief. Hence, the applicants are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 139/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/150/2002-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.139/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between

the management of Rayatwari Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/150/2002-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/ 139/2003 Date: 18.11.2013.

Party No.1: The Sub Area Manager,
Rayatwari Sub Area of WCL,
PO: Rayatwari, Distt. Chandrapur (M.S.)

Party No.2: Sh. Lomesh Khartad, General Secretary,
Rashtriya Colliery Mazdoor Congress,
Dr. Ambedkar Nagar, Ballarpur,
Post & Tah. Ballarpur, Distt.
Chandrapur (MS).

AWARD

(Dated: 18th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and subsection 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Rayatwari Sub Area of Western Coalfields Limited and their workman, Shri V. H. Paul , for adjudication, as per letter No.L-22012/150/2002-IR (CM-II) dated 26.05.2003, with the following schedule:-

> "Whether the action of the management of Chanda Rayatwari Colliery of Western Coalfields Limited, in not protecting the pay of Shri V.H. Paul, Loader converted to time rated w.e.f. 01.07.1999 *vide* office order No. CL/CHA/SM/Rayat/36 dated 20.04.2000/ 06.05.2000 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union Rashtriya Colliery Mazdoor Congress ("the union" in short) filed the statement of claim on behalf of the workman, Shri V.H.Paul, ("the workman" in short) and the management of, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered Trade union under the Trade Unions Act, 1926 and party No.1 is a government company and is a state within Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five central Trade unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWAs" in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contravention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been deliberated by JBCCI, known as NCWAs-I, II, III, IV, V, VI, and VII dated 11.12.1974, 11.08.1979, 27.07.1989, 19.01.1996, 23.12.2000 and 15.07.2005 with period of operation of the said NCWAs from 01.01.1975 to 31.12.1978, 01.01.1979 to 31.12.1982, 01.01.1983 to 31.12.1986, 01.01.1987 to 30.06.1991, 01.07.1991 to 30.06.1996, 01.07.1996 to 30.06.2001 and 01.02.2001 to 30.06.2006 respectively and the workman was appointed as a loader Group-VA on 07.08.1983 and a memorandum of settlement dated 02.11.1992 was arrived between the management and the workmen represented by RKKMS (INTUC) over 10 point charter of demands before the Regional Labour Commissioner (C), Nagpur on 02.11.1992 and by virtue of above settlement, the terms of the settlement become terms and conditions of service of the workman and are binding on the management and all the workmen and the said settlement is at par with an award and cannot be amended in any way except with the assistance with the Conciliation Officer. It is further pleaded by the union that revised basic pay and work load were fixed as per Chapter-III of NCWA-V *w.e.f.* 01.07.1991 at Rs. 88.93 paise for work load of 100 cft and Rs. 104.93 paise for work load of 118 cft and the basic wages of Group-VA was also fixed at the same rate i.e. Rs. 104.93 paise per day and besides the group wages, the loaders were allowed special piece rated allowance ("SPRA" in short) @ Rs. 2.12 p per day in terms of para 3.11.3 of Chapter-III of NCWA-V and the loaders, who had completed service of 10 years or more in the same group were allowed additional SPRA *w.e.f.* 01.07.1994 and then on 01.07.1995 in terms of para 3.12.0 of Chapter-III of NCWA-V and the loaders were also allowed to other benefits such as underground allowance, lead and lift, D.A. and F.D.A. etc.

The further case of the union is that on 11.09.1995, in course of his employment in the underground of Durgapur Rayatwari Colliery Mine No. 4, in the second shift, at about 8.30 p.m., the workman sustained injuries on his waist and left knee and as per the instructions, guidance and advise of the Medical Officer of Chandrapur Area Hospital of WCL, the workman was treated as different hospitals and then the workman was referred to the Apex Medical Board for

assessment of his disability *vide* letter No. 6473 dated 16.03.1997 of Manager, Durgapur Rayatwari Colliery and the workman appeared before the Board on 19.03.1997 and the workman was informed by the Manager *vide* office order No. 21 dated 01/02.04.1997 that his disability was assessed at 15% and he was directed to work on surface with the Safety Officer and the workman was getting basic wages Rs. 104.93p per day and Rs. 28.58p as special piece rate allowance besides other allowances and Party No. 1 arbitrarily and without notice or without option from the workman reduced the grade from Group-VA to Time rated Category-I and fixed basic wages at midpoint of Category-I and deducted SPRA totally *vide* office order dated 29.07.1999 and the workman protested such action by giving letters dated 31.07.1999 and 21.04.2000 and *vide* office order No. 96 dated 30.04.2000/06.05.2000 of the Manager, Durgapur Rayatwari Colliery, though order for payment of SPRA *w.e.f.* 01.07.1999 was passed, nothing was mentioned in the said order about protection of his group wages and no SPRA was paid to the workman and though the workman approached the Party No. 1 again *vide* his letter dated 26.01.2001, no action was taken on the said letter and due to exigencies of jobs, the workman was transferred from Durgapur Rayatwari Colliery to Civil Department, Chanda Rayatwari Colliery *vide* office order No. 1622 dated 29.07.1999, where he was entrusted with the job of Valve Man Category-II, but he was not paid the differences of wages and *vide* order No. 2245 dated 29/30.11.2002, the workman was regularized as Valve Man Category-II.

The further case of the union is that the Party No. 1 unilaterally decided with RKKMS union on 29.10.1995 to give midpoint wages of Category-I on account of conversion of a worker and the same is void ab-initio having no support of law and management of Chandrapur Area has been protecting the group wages and SPRA in cases of loaders and the workers, who have been converted from piece rated to time rated/monthly rated after completion of 15 years of service and there cannot be two type of systems in the same company and the workman has been discriminated and he is entitled for protection of his group wages and SPRA *w.e.f.* 01.07.1999 and all consequential benefits.

3. The Party No.1 in the written statement has pleaded *inter-alia* that the dispute is not an industrial dispute as the individual case of the workman has been espoused by the union, though there is no record to show that the workman is a member of the union and the workman was a member of B.M.S. union in the years 2000, 2001 and 2002 under check off system and the dispute of the workman has not been espoused by the recognized union and the union which has espoused the dispute is not a recognized union and it has no locus standi to raise the same and non of the other workmen of the unit, where the workman is working was interested in the alleged dispute and there was no community of interest between the general body of workmen and the workman and therefore, the dispute has to be treated as individual dispute and it has been observed by the Hon'ble Supreme Court that to convert an individual dispute into an industrial dispute, it has to be established that it had been taken up by the union of employees of the establishment or by an appreciable number of workmen of the establishment.

It is further pleaded by the Party No.1 that as the workman became physically unfit to work as a loader, request was made by him from time to time to provide him with alternate job in time rated category and considering his health conditions and his inability to work as a loader, it gave a sympathetic consideration and absorbed him in time rated job and it is obvious that his conversion to time rated was on his request and for the reasons attributable to him and as such, his conversion from loader to time rated cannot be said to be wrong or illegal and it is inherent in the request/option for change of job that he would accept the wage of the changed category and the claim of the wages of higher job, amounts to enjoying double advantage, the benefits of less strenuous and lighter job and benefit of higher wages, which would be against the principles of natural justice and putting the management in economic and financial disadvantage and the fixation of pay of the workman at the midpoint of the time rate category was done in accordance with the policy decision of the company's modified settlement arrived at by an agreement dated 31.10.1995, which was circulated and is in practice and operation and the fixation of the wages of the workman was fair, proper and justified.

It is also pleaded by the Party No. 1 that the workman was appointed on 07.08.1983 and he received injury while on duty on 11.09.1995 in second shift, in the underground of Durgapur Rayatwari Colliery and for his injury, he was treated in the company's and private hospitals and finally referred to the Apex Medical Board for assessment of his disability and the Medical Board found him fit for surface job and assessed loss of 15% earning capacity and based on the recommendations of the Medical Board, he was deployed in time rated category as per interim arrangement till regular full time time rated job was available to adjust him against that post and according to the extant rules and practice, during such interim arrangement, he was paid group wages of P.R. loader and the case of the workman was referred to headquarters for permanent absorption in time rated category job, on the basis of attendance of 240 days in time rated category in preceding years and while fixing in Cat-I, as per policy decision of the company arrived at by an agreement on 31.10.1995, his pay was fixed at midpoint of category-I in time rated category and since he was deployed continuously as a Valve man, he was regularized as Valve man in time rated category-II.

The further case of the Party No. 1 is that normally it is being pleaded by the unions including in the pleadings

of the union in the present reference that in accordance with the settlement dated 02.11.1992, all the cadres, who are converted to time rated from piece rated are entitled for protection of group wages irrespective of their request for conversion, but such view/interpretation is not correct, because at para 1(i) of the said settlement, management had agreed to provide alternative light job to the employees particularly loaders, who are physically weak due to their old age, sickness or injured on duty irrespective of vacancies and in such cases, there was no stipulation of protection of wages and such cases fall specifically under the said clause and under para 1(ii) of the settlement, management agreed to fill up 50% of the vacancies accruing in time rated categories from amongst the piece rated workers who have completed at least 15 years of service and following the para 1(ii), it was agreed in para 1(iii) that management shall on conversion from PR to TR, protect the group wage of the PR workers and application of para 1(iii) is specifically confined to cases covered under para 1(ii) and as such, the case of the workman is not covered by para 1(iii) of the settlement, as he was not taken on time rated against accruing vacancies and since there were controversies about the interpretations and implementation of the settlement dated 02.11.1992, the union, RKKMS with whom the settlement was signed and the management modified the settlement *vide* their agreement dated 31.10.1995 and in terms of the agreement (modified settlement), such PR workers who opt for TR jobs are to be placed in the corresponding category at midpoint of the wage scale and as the workman himself opted for TR, he was rightly placed at midpoint of TR on being permanently deployed in that post and the agreement dated 31.10.1995 modifying the earlier settlement was not challenged by any union/workers and the same continues to remain in force and unless the same is challenged and declared null and void through appropriate proceedings under the Act, its applicability cannot be questioned in a proceeding like the present reference. The further case of the Party No. 1 is that normally when a loader is working as a loader and his wages are reduced, it will amount to reduction of wages, but if a loader is not working as a loader after opting for time rated job and working in the lower category and he is paid according to actual job performed by him, the same does not amount to reduction of wage and when a piece rated loader opts for TR job in lower grade, he cannot validly claim the benefits of PR job including wages and in such a case, he is also not entitled to claim for advantages and benefits of both the jobs, in other words, lower and less strenuous work and higher wage of a higher category and if the demand of the workman/union is granted, the same will amount to discrimination, as much as the loaders actually working as loaders would be discriminated against those who opt out of risk factors and for lighter jobs and enjoy the same wage benefits and such a situation would ultimately create a feeling of discontent and encourage influx of loaders to TR job on same pretext or the other and it would be against the principles of natural justice to make payment of higher wages for performing a lower category of job and it is only when the job of a workman is changed by the management due to exigencies of work or in the interest of management, then the pay of the workman has to be protected and on the contrary, if the job is changed on the request of the workman on his own interest, there is no justification for protecting his wages and as its action is perfectly justified and legal, the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the union on behalf of the workman that the Party No. 1 has raised frivolous technical points regarding the maintainability of the reference only to delay and defeat the claim of the workman and such technical objections cannot be entertained in view of the Rulings of the Hon'ble Apex Court given in different judgments and the Central Government has referred the industrial dispute for adjudication and as such, the same is to be adjudicated by the Tribunal and there is no recognized union in WCL and as per law, when there is no recognized union, every registered union enjoys similar status and can raised industrial dispute and Party No. 1 has settled number of cases with the union before the ALC (C), Chandrapur and it is competent to raise the dispute on behalf of the workman and Party No. 1 is trying to mislead the Tribunal, by framing issues in the written statement. The union has also reiterated the facts regarding sustaining of injuries by the workman while on duty, his examination by the Medical Board to assess his disability and giving of light work to the workman by Party No. 1 as per the recommendation of the Medical Board and the entitlement of the workman for protection of his wages etc.

5. In order to prove the claim, the union has examined the workman as a witness. One Shri Shrikrishna S. SheIke, the Senior Personnel Manager of Rayatwari Sub Area has been examined as a witness by Party No. 1. Both the parties have relied on documentary evidence as well.

The workman so also the witness for Party No. 1 in their respective examination in-chief, which is on affidavit have reiterated the facts mentioned in the statement of claim and in the written statement respectively.

In his cross-examination, the workman has stated that as he was declared unfit by the Medical Board to work as a loader in the underground, the management gave him the work of Valve man to him and as per order dated 29.07.1999, he was converted from piece rated workman to time rated workman by the management of WCL.

The witness for Party No. 1 in paragraph 3 of his affidavit has stated that the workman was deployed in TR category on the basis of recommendations of the Medical Board and he was deployed as such as an interim arrangement till regular full time TR job was available to adjust him against the post.

It is to be mentioned here that in paragraph 8(ii) of the written statement also, the Party No. 1 has mentioned that based on the recommendation of the Medical Board, the workman was deployed in the TR category as per interim arrangement till regular full time TR job was available to adjust him against that post.

It is to be mentioned further that in view of the stands taken by the parties in the statement of claim and written statement, there is no need to discuss the oral evidence of the witnesses in detail.

6. In this case all most all the facts pleaded in the statement of claim have been admitted by the Party No. 1. The Party No. 1 has pleaded that the workman is not entitled to protection of his wages, as his conversion from loader to time rated job was made on his request and the provision of protection of wages as mentioned in the settlement dated 02.11.1992 was not applicable to his case and the fixation of wages of the workman at midpoint of time rated category was made as per the policy decision of the Party No. 1.

7. At the time of argument, it was submitted by the learned advocate for the Party No. 1 that this dispute is not an industrial dispute and the union has no backing of any member at Chandrapur and the workman is not a member of the union and there is no community of interest and the dispute is purely an individual dispute. It was further submitted by the learned advocate for the Party No. 1 that the conversion of the workman from loader to time rated was as per his request and his wages was fixed at midpoint of time rate category in accordance with the policy decision of the company's modified settlement arrived at by an agreement dated 31.10.1995 and such facts have been proved beyond doubt by the evidence of M.E. 1 and the documents Exts. M-I to VI and such fixation of wages of the workman is just and fair and the workman is not entitled to any relief.

8. Per contra, it was submitted by the learned advocate for the workman that the evidence on record clearly shows that the conversion of the workman from loader to time rated job was as per the recommendation of the Medical Board of Party No. 1 and not on the request of the workman and the workman is entitled for protection of his wages as per the settlement dated 02.11.1992, Ext. W-I and the union is entitled to raise the dispute and the dispute is an industrial dispute and the workman is entitled for the reliefs as claimed.

9. It is to be mentioned here that learned advocates for the parties have referred to some awards passed by this Tribunal in support of their respective submissions. However, it is to be mentioned that the present reference is to be considered and decided on the facts and circumstances of this case and the evidence on record and not on the basis of the findings given in other cases, basing on the respective facts and circumstances and evidence on record of the said cases.

10. On perusal of the materials on record, it is found that the union is entitled to espouse the dispute on behalf of the workman. From the letter of reference made by the Central Government, it is found that the dispute was raised by the union before the conciliation officer and on failure of the conciliation, the reference has been made for adjudication to this Tribunal and the union has been directed to file the statement of claim and relevant documents in support of the claim. It is also found from the pleading of the parties and the materials on record that the dispute raised by the union is an industrial dispute.

11. From the pleadings of the parties and the evidence on record, it is clear that the workman was injured while on duty in the colliery and he was examined by the Medical Board and the Medical Board on examination found him unfit to work as a loader, but found him fit to do light work and recommended to give him light duty and on the basis of such recommendation, the workman was given light work on surface and ultimately, he was converted to time rated workman from piece rated. Party No.1 has relied on Ext. M-IV in support of its claim that the workman requested for his conversion from loader to time rated workman. On perusal of Ext. M-IV, it is found that the same is a letter submitted by the workman dated 26.06.1999 to give him light work basing on the recommendation of the Medical Board. Moreover, it is found from the documents and evidence of the witness of the Party No.1 that the conversion of the workman to time rated was already made by Party No.1 prior to 29.06.1999. So, it is clear from the record that the conversion of the work from piece rated to time rated by the Party No.1 on the recommendation of the Medical Board and not on the request of the workman.

12. The stand of the Party No.1 is that para 1 (iii) of the settlement dated 02.11.1992 regarding protection of wages of loader has no application to the conversion of loader to time rated category as per para 1(i) and the same is applicable to the conversion as mentioned in para 1(ii) only.

For better appreciation, I think it proper to mention paragraphs 1(i) to 1(iii) of the settlement dated 02.11.1992. The same are as follows:—

1.1 Demand No.1(i):

That the management shall provide alternate/light job to the employees particularly loaders who are physically weak due to their old age, sickness or 1.O. D. irrespective of vacancies.

1.2 Demand No. 1(ii):

That the management shall fill up 50% vacancies arising out of natural wastage in Time Rated and monthly Rated category/grade from amongst the

piece rated workers who have completed at least 15 years of service.

1.3 Demand No. 1(iii):

That the management shall on conversion from P.R. to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category/grade if exceeds the maximum of the category/grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/ promotion. This decision shall be effective from 01.01.1992. It is also agreed that the cases already converted between 14.11.1990 to 31.12.1991 shall be considered for notional fixation only and earlier cases not be considered.

13. On perusal of the settlement dated 02.11.1992, it is found that in para 1(iii), the Party No.1 has agreed to protect the wages of the loaders converted to time rated or monthly rated. There is no specification in that paragraph that the same will apply only to cases covered under para 1(ii). On plain reading of the paras 1(i) to 1(iii), it is found that there is nothing in the same to show that para 1(iii) has no application to the cases of para 1(i), directly or by implication. Hence, I find no force in the submission made by the learned advocate in that respect.

14. So far the modified settlement dated 31.10.1995 is concerned, on perusal of the same, it is found that the same is not a settlement at all and the same is only the record note of discussion held between the management of WCL and RKKMS on 31.10.1995. The said so called settlement has no legal sanctity and cannot be said to be a legal settlement at all.

Moreover, in the said record note of discussion also in para 5, provision has been made to protect the wages of the loader converted to time rated or monthly rated category under certain circumstances. Para 5 of the said record note read as follow:—

"Such piece rated workman who may put in time rated/ monthly rated in future by managerial decisions i.e. without seeking option from time rated/monthly rated or without going through the selection process against internal notification from time rated/monthly rated, will continue to get protection of piece rated wages such piece rated workmen who came to TR as per option given by them will not get this benefit."

As in this case, it is already held that the workman did not give any option for his conversion and the conversion was made by Party No.1 on the recommendation of its Medical Board and the same is a managerial decision, the workman is entitled for protection of the basic wages and SPRA of loader. Hence, it is ordered:—

ORDER

The action of the management of Chanda Rayatwari Colliery of Western Coalfields Limited, in not protecting the pay of Shri V.H.Paul, Loader converted to time rated w.e.f. 01.07.1999 vide office order No. WCL/CHA/SM/ Rayat/36 dated 20.04.2000/06.05.2000 is illegal and unjustified. The workman is entitled for protection of basic wages and SPRA of piece rated loader w.e.f. 01.07.1999 and all consequential benefits arising out of such wage protection.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 141/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/197/2002-आईआर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/ 2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Hindustan Lalpeth Open Cast Sub-Area of WCL, and their workmen, received by the Central Government on 27/12/2013.

[No. L-22012/197/2002-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/141/2003 Date: 20.09.2013

Party No. 1 : The Sub-Area Manager,
Hindustan Lalpeth Open Caste Sub-Area of WCL
Post: Lalpeth, Distt. Chandrapur (MS).

Party No. 2 : Shri Chandrakant Khandre, General Secretary,
Koyala Shramik Sabha(HMS),
Br. Chandrapur Area,
C/o. C.G. Khadre, Near Mahakali Mandir,
PO & Distt. Chandrapur (MS).

AWARD

(Dated: 20th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Sheikh Ejaj Ahmad, Sheikh Siraj for adjudication, as per letter No.L-22012/197/2002-IR (CM-II) dated 09.05.2003, with the following schedule:—

> "Whether the action of the management in relation to Hindustan Lalpeth Open Cast of Western Coalfields Ltd., in dismissing Sh. Sheikh Ejaj Ahmad, Sheikh Siraj, Driver, Hindustan Lalpeth Open Cast Vide Order No. WCL/CHA/PO/HLOC/PER/1840, dated 04.07.1998 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, "Koyala Sharmik Sabha(HMS)", ("the union" in short) filed the statement of claim, on behalf of the workman, Shri Sheikh Ejaj Ahmad, Sheikh Siraj, ("the workman" in short), and the management of WCL, ("Party No. 1" in short) filed their written statement.

In the statement of claim it was pleaded on the behalf of the workman that the enquiry proceedings initiated against the workman was illegal and the dismissal of the workman from services was also not legal and the workman is entitled for reinstatement in service with full back wages and all consequential benefits alongwith continuity in service.

3. The Party No.1 filed the written statement denying the allegations made in the statement of claim and pleading *inter-alia* that the domestic enquiry had been held against the workman in accordance with the principles of natural justice and there was no illegality in conducting the departmental enquiry and the workman is not entitled for any relief.

4. It is to be mentioned here that as this is case of dismissal of the workman after holding a departmental enquiry, a preliminary issue regarding the fairness or other wise of the departmental enquiry was framed for consideration and parties were allowed to plead evidence on the preliminary issue. Accordingly, the workman examined himself as a witness and thereafter closed the evidence from his side. The case was posted to 20.09.2013 for adducing evidence from the side of the management on the validity of the departmental enquiry and management filed the affidavit of witness, Shri Ramesh Hanumantrao Dingalwar.

The workman appeared in person alongwith his advocate on 20.09.2013 and filed an application alongwith an affidavit to close the case as withdrawn on the ground that he will take up the matter with the Party No. 1 for amicable negotiation and settlement. Copy of the application was served on the advocate for the Party No.1, who made endorsement on the application itself of "No Objection"

4. As the workman doesn't want to proceed with the reference, the reference is liable to be dismissed without granting of any relief to him. Hence, it is ordered:—

ORDER

The reference is dismissed as not pressed by the workman. The workman is not entitled to any relief. No leave is also granted to the workman to raise the dispute again or to review the present reference. The applications and affidavit filed by the workman are made part of the award.

J. P. CHAND, Presiding Officer

COURT'S COPY

BEFORE THE HONOURABLE PRESIDING OFFICER CENTRAL GOVT. INDUSTRIAL TRIBULNAL-CUM-LABOUR COURT, NAGPUR

Reference Case No. CGIT/NGP/141/2003

Sub-Area Manager, Hidustan Lalpeth
Open Cast Area W.E.L. Chandarpur ...Employer

Vs.

Their Workman (Case of Sri Sheikh Ejaj
Ahmad Sheikh Siraj) ...Union Workman

Humble Application of Workman for withdrawal of Reference Case from Court

(1) That the workman does not want to follow up the case/before this Honourable Tribunal and to this effect. In long original of affidavit sworn by him before the Executive Magistrate, Chandrapur on 16.9.2013 so that the matter could be settled by negotiations with mangement. Xerox of same sent to lowest by Regd. A/D has been recorded on 19.9.2013.

(2) That the Xerox of affidavit with forwarding letter dt. 16.9.2013 addressed to Management has been served on the same day and recopted on signature and seal of his office. The original letter dt. 16.9.2013 is also being enclosed herewith.

(3) In view of it is prayed that the case may kindly be closed as with drawn.

Nagpur -Sd-
Dated : 20.9.2013 (K.K. YADAV)
C.F.A

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 239/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/141/2003-आईआर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 239/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[No. L-22012/141/2003-IR (CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/239/2003 Date: 29.11.2013

Party No.1(a): The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur -440015

Party No.1(b): The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgatye,
Mumbai - 400020
Versus

Party No.2: The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ashok Baliram Bhitre for adjudication, as per letter No. L-22012/141/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Ashok Baliram Bhitre, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ashok Baliram Bhire, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 27.03.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract

Labour (Regulation and Abolition) Act, 1970 and issued Notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 27.03.1993 to14.03.1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no.1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as resjudicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit,

the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was engaged in F.C.I. through the contractor, "Bombay Industrial Security" and he had submitted an application to the said contractor to engage him as a security guard and "Bombay Industrial Security" appointed him as a security guard. The workman in his cross-examination has further admitted that no appointment order was issued by the F.C.I. to him and he has filed no document to show that he was appointed by F.C.I. and F.C.I. was making payment of his wages and he had worked for 240 days in every calendar year with F.C.I. and he does not know English and he does not know the contents of the affidavit filed by him and he cannot say if there was any advertisement by F.C.I. for appointment of security guards. The workman has further admitted that after two years of his engagement, another contractor was appointed by the F.C.I. and the management of F.C.I. asked the contractor to engage him as a security guard.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed to work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 27.03.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970 ("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under Section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur

and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 and 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/ 99, cannot operate as resjudicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR — 167 (Food Corporation of India *Vs* Prashant Pandurang Ramteke & Others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the party no.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as resjudicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of resjudicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others *Vs.* National Union Water Front Workers and Others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of resjudicata. So, there is no force in the contention raised by the learned advocate for the Party No. l.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India

Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross—examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-11 LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... ." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal

consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created • irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:-

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the

owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited v. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and 'contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association v. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate

cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Intact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Forum to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/ 11/89 /LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 244/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/146/2003-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 244/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 27/12/2013.

[No. L-22012/146/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/244/2003 Date: 29.11.2013

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1 (b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Firoj Jamshir Khan for adjudication, as per letter No.L22012/146/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Firoj Jamshir Khan, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Firoj Jamshir Khan, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1 " in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 13.08.1997 and he was initially engaged through a contractor at Wardha Depot of Party No. 1 , as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1 , without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1997, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and

the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 13.08.1997 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them arid the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as *res-judicata* and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that no appointment order was issued by the F.C.I. to him and he has filed no document to show that he was appointed by F.C.I. and F.C.I. was making payment of his wages and he had worked for 240 days in every calendar year with F.C.I. and he does not know English and there was no advertisement by F.C.I. for appointment of security guards.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed to work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 13.08.1997 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and party no 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition)Act,1970("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1 .

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with malafide intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with

a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as *res-judicata*.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR - 167 (Food Corporation of India *Vs.* Prashant Pandurang Ramteke &others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as *res-judicata* between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of *res-judicata*, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom.CR - 167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as *res-judicata*". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of *res-judicata*. So, there is no force in the contention raised by the learned advocate for the Party No. 1 .

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was

engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the specific admission of the workman in the statement of claim and so also in his evidence on affidavit that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman' has not produced any evidence to show that he was directly engaged by the Party No. 1 .

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-11 LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others *Vs.* Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... "The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Honble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour

in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Ca1): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation

with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited Vs. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:-

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide

whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Forum to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1 , by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14 . It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार

एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 241/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.12.2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/143/2003-आईआर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 241/2003) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/143/2003-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/241/2003 Date: 29.11.2013

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgate,
Mumbai - 400020.

Versus

Party No.2 The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar, Ward No. 2,
Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Sunil K. Mankar for adjudication, as per letter No.L-22012/143/2003- IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sunil K. Mankar, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil K. Mankar, (the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1 " in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 24.12.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central

Government decided to abolish the appointment of contract abour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 24.12.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as *res-judicata* and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was engaged in F.C.I. through the contractor, "Singh Security Services" and he had submitted an application to the said contractor to engage him as a security guard and "Singh Security Services" appointed him as a security guard at FCI Wardha. The workman in his cross- examination has further admitted that no appointment order was issued by the F.C.I. to him and he has filed no document to show that he was appointed by F.C.I. and F.C.I. was making payment of his wages and he had worked for 240 days in every calendar year with F.C.I. and he does not know English and he does not know the contents of the affidavit filed by him.The workman has further admitted that after two years of his engagement, another contractor was appointed by the F.C.I. and the management of F.C.I. asked the contractor to engage him as a security guard.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed tom work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continuously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 24.12.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and party no 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act,1970 ("Act,1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenure of the contract was for two years and though there was change of contractor in every two years, the workman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 and there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever though the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. 1 that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that though Party No. 1 in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/S 10 of the Act, 1970 abolished contract labour system in the establishment of Party No. 1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1 .

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record any document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with *mala fide* intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate

authority and as such, the judgment in Writ Petition 1389/99, cannot operate as *res-judicata.*

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR — 167 (Food Corporation of India *Vs.* Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as *res-judicata* between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of *res-judicata,* due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found froth the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others [reported in 2001 (7) SCC1)], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006 (2) Bom.CR—167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as *res-judicata*". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of *res-judicata*. So, there is no force in the contention raised by the learned advocate for the Party No. I.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, “In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was

made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially, engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1 .

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 19854II LLJ-4 (S.C.) (The Workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and Others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others *Vs.* Steel Authority of India and Others).

In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do...." The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act
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> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible .

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal.): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal.): W.A. Nos. 345—354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal.), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various marnners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment

and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub- section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation

Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid him wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1 , by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई ओ सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्ष्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 55 of 1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-30012/156/1998-आईआर (सी-I]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.55/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial

Dispute between the management of M/s. IOCL and their workmen, received by the Central Government on 19/12/2013.

[F. No. L-30012/156/1998-IR(C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 55/99

Between-

Sri Ashok Kumar Mehra,
S/o Late Bhawani Prasad,
House No.16/49 Sheetla Gali,
Chatta Dhoen, Agra.

And

Dy. Director / General Manager, (O)
Indian Oil Corporation Limited,
Marketing Division,
Ysuf Sarai,
New Delhi.

AWARD

1. Central Government, Mol, New Delhi, *vide* notification No. L.1-30012/156/98 IR (C-I) dated 11.03.99, has referred the following dispute for adjudication to this tribunal—

> 2. Whether the action of the Management of Indian Oil Corporation in terminating the services of the workman Sri Ashok Kumar Mehra *vide* order dated 05.09.96 is legal and just? If not to what relief the workman is entitled?

3. Brief facts are-

4. It is an admitted fact of both the parties that the claimant was employed as temporary clerk cum typist at Agra Depot of the opposite party on 02.04.74.

5. It is alleged by the workman that he never gave any cause of complaint to his superiors but all of sudden the workman was suspended *vide* order dated 21.09.95 and the charge sheet dated 21.09.95 was served upon him wherein vague and false charges were leveled against him. The main charge was that he obtained service as Clerk-cum-typist by producing fake and forged scheduled caste certificate in Indian 'Oi1 Corporation. Whereas he denied the charges and clearly stated that the certificate produced by him was neither forged nor fake but was genuine. It is alleged that the management during the inquiry relied upon several documents including the report of the District Magistrate but the copies of the same were not furnished to the employee during the course of inquiry. The inquiry proceedings are vitiated being made in violation of principle of natural justice. He also submitted his evidence including the police report in defense but that was not considered by the enquiry officer. Since the report of the inquiry officer is not legal and fair therefore, his punishment order passed by the disciplinary authority on the basis of the report is liable to be quashed and he is entitled to be reinstated in the service with full back wages and all consequential benefits.

6. Opposite party has denied the aversions of the claimant on the ground that the caste certificate claiming to be Jatava caste under SC/ST category submitted by the applicant at the time of seeking employment was subsequently found forged and fake. He was rightly issued charge sheet. Enquiry officer has provided him all possible opportunities for his defense and after considering the material available on the inquiry file the inquiry officer submitted his detailed report before the disciplinary authority and the disciplinary authority concurring with the report of the inquiry officer has rightly awarded him punishment considering the gravity of the charges. There was no illegality in holding the departmental inquiry against the employee. Therefore, the action taken by the management against the workman is wholly just and fair and the workman is not entitled for any relief and his claim is liable to be rejected.

7. Rejoinder statement has also been filed wherein nothing new has been pleaded by the workman.

8. On previous occasion this tribunal has recorded an ex-parte award in the case in favor of the workman on 15.10.2001. The opposite party being aggrieved with the aforesaid award preferred writ petition No.312/2003 before the Hon'ble High Court, Allahabad, which was ultimately, decided by the Hon'ble Court on 08.06.2005 whereby the Hon'ble High Court quashed the award of the tribunal and remanded the case to the tribunal for deciding it a fresh.

9. After receipt of the judgment of the Hon'ble High Court the tribunal has issued notices to both the parties.

10. Thereafter both the parties were permitted to adduce their evidence. Initially both the parties put in their appearances before the tribunal. Workman has initially filed his affidavit on 23.11.2000 along with annexure 1 to 28-A, annexure C-4 to C-8 and certain other papers which are photocopies. Mostly these are the papers which are the papers filed by the opposite party also relating to inquiry proceedings.

11. Opposite party has filed the documents *vide* list dated 20.12.2006. These documents are copy of the complaint dated 05.09.94, copy of the suspension order and charge sheet, copy of entire inquiry proceedings along with the management exhibits, copy of the inquiry report, copy of show cause notice, copy of punishment order dated 05.09.96.

12. After remand the management has adduced evidence of Sri Vishal as M.W.1 who is Dy. Manager in the

Indian Oil Corporation.

13. Heard and perused the whole record.

14. It is pertinent to mention that after remand of the case the workman did not appear to adduce his evidence. I have considered his affidavit which was produced on 23.11.2000 which was before the passing of the award but after issuance of several notices the claimant did not appear for cross examination so this evidence cannot be read in evidence as the claimant did not appear for cross examination and the opposite party did not get the opportunity to cross examine the witness. Whereas the opposite party adduced M.W.1 Sri Vishal who filed an affidavit in evidence and stated on oath that the workman was appointed as typist clerk on temporary basis. His services were regularized with effect from 4.4.75 on the basis of a caste certificate dated 17.12.74 claiming himself to be a SC candidate belonging to Jatav Caste. On verification caste certificate bearing No.535/RC dated 17.12.74, copy of which has been filed issued by Tehsildar, Agra, was found to be a fake certificate and therefore, the workman was suspended and a charge sheet detailing the allegations was issued to him dated 21.09.95. Workman submitted his reply. Thereafter an inquiry was conducted on 23.07.76 by a two member committee and full opportunity was given to the workman to produce the original caste certificate on the basis of which he has secured the job in Indian Oil Corporation but he failed.

15. On the recommendation of the enquiry committee a show cause notice was issued to the workman and the same was replied by the workman. Thereafter after giving full Opportunity the services of the workman were terminated *vide* order dated.05.09.06.

16. Therefore I have considered all the circumstances and aspect of the case. The workman did not appear in evidence though being a very old case he was granted several opportunities. He did not file any caste certificate before the tribunal also on which he has obtained the employment.

17. The evidence adduced by the opposite party is un-rebutted. Enquiry proceedings have also been filed. They have explained that they have given full opportunity to the workman during the inquiry. Therefore, there is no reason to vitiate the inquiry.

18. In my view full opportunity has been granted by the management to workman during the course of inquiry. There does not appear any breach of natural justice as contained in the claim statement that the workman has not been granted the relevant papers on which the management has relied upon. There is no force in such aversions. There is no evidence in support of the pleadings filed by the workman. The charges are grave in nature and the employee has obtained the employment on the basis of fake and false caste certificate and therefore he does not deserve for were any kind of sympathy, therefore, the claim of the workman fails. As such I do not find any illegality or unjust in the action of the opposite party in terminating his services on 05.09.96 after holding full inquiry.

19. Therefore, it is held that the workman is not entitled for any relief.

20. Reference is answered accordingly against the workman.

Dt. 24.09.13

RAM PARKASH, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डी वी सी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 61/2002, 62/2002, 63/2002 और 64/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.12.2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/109/2001-आईआर (सीएम-II),
फा॰ सं॰ एल-42012/110/2001-आईआर (सीएम-II),
फा॰ सं॰ एल-42012/107/2001-आईआर (सीएम-II),
फा॰ सं॰ एल-42012/108/2001-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.61/2002, 62/2002, 63/2002 & 64/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of D.V.C. Soil Conservation Deptt. and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-42012/109/2001 - IR(CM-II),
F. No. L-42012/110/2001 - IR(CM-II),
F. No. L-42012/107/2001 - IR(CM-II),
F. No. L-42012/108/2001 - IR(CM-II)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947.

Ref. No. 61/ 2002, 62/2002, 63/2002, 64/2002

Employers in relation to the management of DVC Soil Conservation Deptt. Hazaribagh

AND

Their workmen.

Present : SRI RANJAN KUMAR SARAN,
Presiding officer

Appearances:

For the Employers : Sri Chandra Kishore, Advocate
For the workman : Sri D.K.Verma, Advocate
State : Jharkhand.
Industry : Power
Dated : 3.12.2013

AWARD

The Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

Ref. No. 61/2002 (Order No.L-42012/109/2001-IR -(CM-II), dated 31/05/2002)

SCHEDULE :- Whether the action of the management of DVC in terminating the service of Sri Fulchand Saw, workman is justified ? If not, to what relief the workman concerned is entitled to ?"

Ref. No. 62/2002 (Order No.L-42012/110/2001-IR -(CM-II), dated 31/05/2002)

SCHEDULE :- Whether the action of the management of DVC in terminating the service of Sri Baijnath Mistry, workman is legal justified? If not, to what relief the workman concerned is entitled to ?"

Ref. No. 63/2002 (Order No.L-42012/107/2001-IR -(CM-II), dated 31/05/2002)

SCHEDULE :- Whether the action of the management of DVC in terminating the service of Sri Chhotan Mahato, workman is justified? If not, to what relief the workman concerned is entitled to ?"

Ref. No. 64/2002 (Order No.L-42012/108/2001-IR -(CM-II), dated 31/05/2002)

SCHEDULE :- Whether the action of the management of DVC in terminating the service of Sri Kartik Mahato, workman is justified? If not, to what relief the workman concerned is entitled to ?"

2. The all case is received form the Minstry of labour on 21.06.2002. After receipt of reference both parties are noticed, the workman files their written statement on 22.08.2002. And the management also files their written statement -cum-rejoinder on 28.11.2002.

3. All the above reference cases have been heard analogously as all the four cases are identical in nature.

4. Short point to be decided in the reference as to termination of the workman is just and proper by the DVC management.

5. The case of the workman is that, he is a casual workman under the DVC and was continuously rendering service to the management and the management illegally terminated their services.

6. On the other hand; it is the case of the management that the workman were working through job contract as the contract period was over and there was no need to engage contractor to provide job to workman, the work of the workman automatically stopped, since there was no work to take workers through contractors.

7. But the workman in their written statement and evidence have stated that they were not job contract workmen but casual workman, and similarly placed casual workman have been regularised in the job and as such the present workmen to be taken into service by DVC.

8. But on close scrutiny of the documents filed by the workman, it is seen that the workman were contractual employees.

9. The workman have shown therein areas job contract workman *i.e* in the year 1994 , and the same has been filed by the workman, and that point of time there was no controversy between the parties. Hence the workman concerned were job contract workman, it is submitted by the management that they are not now engaging contractors to provide workman, Therefore the workman have no right to continue to work under DVC management. But the management presently discontinued the job contractor, for job of the DVC has not been pleaded in the written statement nor proved by any legal evidence.

10. Considering the facts and circumstances of this case, I hold that the workman be taken as workman under job contractors and they be placed as they were previously worked.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 197.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्ष्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न॰ 1, धनबाद के पंचाट (संदर्भ संख्या 38 of 1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 19/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/140/1997-आईआर (सी-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.38/1998) of the Central Government Industrial Tribunal/Labour

Court, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/140/1997-IR(C-II)]
M. K. SINGH, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, DHANBAD

Reference: No. 38/ 1998

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Employer in relation to the management of Food Corporation of India, Patna

AND.

their workmen.

Present: Sri R.K. Saran
Presiding Officer.

Appearances:

For the Employers : None
For the workman. : None
State: Jharkhand. Industry-Food
Dated 12/11/2013

AWARD

By order No. L-22012/140/ 97 /IR (C-11) dated 23/30-7-98, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the Management of FCI, Patna in not regularizing the Services of Smt Sita Mehta Rani and not paying proper wages and other benefits as per norms of the Food Corporation of India is justified or not? If not, to what relief the workman is entitled?"

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 13/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/124/2008-आईआर(सीएम-II)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 13/2009 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL Hqrs. and their workmen, received by the Central Government on 27/12/2013.

[F.No. L-22012/124/2008 - IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/13/2009

Presiding Officer: SHRI R.B.PATLE

Shri Santosh Chaturvedi,
General Secretary,
Coal India Diploma Abhiyantha Sangh,
SECL Zone, Zonal office,
Qr.No.B/397, Adarshnagar,
PO Kusmunda, Korba,
Chhattisgarh. ...Workman/Union

Versus

Director (Pers.),
SECL Hqrs.,
Seepat Road,
Bilaspur,
Chhattisgarh.

The Chief General Manager (P&A),
SECL Hqr., Seepat Road,
Bilaspur,
Chhattisgarh. ...Management

AWARD

(Passed on this 29th day of October 2013)

1. As per letter dated 27-2-2009 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/124/2008-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of SECL in deduction of 8 days wages of workmen (as per list enclosed) from their salary for the month of February 2008 paid in March 2008 is legal and justified? To what relief are the workmen concerned entitled?"

2. After receiving reference, notices were issued to the parties. Despite of notice, workman did not appear. They are proceeded exparte on 12-4-2012.

3. Management filed Written Statement. Management submits that Union failed to file Statement of Claim. It is proceeded exparte. It is proceeded exparte on 14-4-12. That 8 days wages of workmen were deducted as disclosed in the order of reference. All 5 employees are working as Engineering Assistant(Civil). All of them are senior most employees in the cadre. Unauthorized absence of senior employees cause loss of production and administrative inconvenience. If several employees remained absent from duty without prior intimation, management is put to inconvenience. That the Union has issued notice of hunger strike dated 4-1-08. The notice was displayed at Hqrs of SECL. Management called the Union for discussing with the Union. 21 points were discussed with Union on 5-2-08. Status and report was communicated to the Association which was satisfied with the explanation of management. However on 5-2-08, more than 10 Engineering Assistant/ Diploma Holder Supervisory Staff absented from duty without intimation or sanctioned leave. Their unauthorized absence from duty put management to inconvenience and loss of production. Under Payment of Wages Act, action was initiated under Section 9(2) of P.W.Act. Action was notified for recovery of wages. That the management is empowered to deduct his wages. Accordingly the management taken action.

4. That Union had put demand for withdrawal of the order of deduction of wages. That more than 10 employees in question had gone on mass Casual Leave. It is submitted that deduction of wages is permissible under Section 9(2). IInd party submits that action of reduction of wages is legal and justified.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of SECL in deduction of 8 days wages of workmen (as per list enclosed) from their salary for the month of February 2008 paid in March 2008 is legal ?	In Affirmative
(ii)	If not, what relief the workman is entitled to?	Relief prayed by Union rejected.

REASONS

6. Though the action of the management deducting wages of the employees from February 2008 is challenged, the Union failed to file Statement of claim. Union did not participate in the reference proceedings. No evidence is filed by workman to substantiate its contention. Management filed Written Statement and evidence of Shri P.K. Agrawal, Manager (Legal) supporting action of deduction of wages for absence without intimation. As Union failed to adduce any evidence about illegality about deduction of wages by management, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:—

(1) Action of the management of SECL in deduction of 8 days wages of workmen (as per list enclosed) from their salary for the month of February 2008 paid in March 2008 is proper.

(2) Relief prayed by Union is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 39/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/119/2001-आईआर(सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 39/2002 of the Cent. Govt.Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Dumanhill Colliery of SECL, P.O. Sonamani and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/119/2001 - IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/39/2002

Presiding Officer: SHRE R.B.PATLE

The Secretary,
Koyla Mazdoor Sabha,
Branch Dumanhill
PO Sonamani,
Distt. Korea (MP) ...Workman/Secretary

Versus

Sub Area Manager,
Dumanhill Colliery of SECL,
PO Sonamani,
Distt. Korea (MP) ...Management

AWARD

(Passed on this 15th day of November 2013)

1. As per letter dated 21-2-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/ 119/2001-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Duman Hill Colliery of SECL, PO Sonamani, Distt. Korea (Chhattisgarh) in not promoting Shri Mohan Dass S/o Shri Amar Das, Category I Mazdoor of the Dumanhill Colliery Hospital w.e.f. 1995 and superseding Shri Mohan Das by promoting Shri Hari Nandan, Junior workman from Category I Mazdoor to Ward Boy is legal and justified? If not, to what relief Shri Mohan is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 3/1 to 3/6. The case of 1st party workman is that he was appointed as tub loader in Damua Hill Colliery of WCL in 1977. While he was working as tub loader in Damua Hill colliery, he met with an accident. Then he was designated in post of Category-I Mazdoor. He was posted in same colliery i.e. in Duman Hill colliery. In 1984, he was working as Ward Boy. He was continuously working as Ward Boy. He was looking after the patients in Hospital, his duties were of cleaning of ward, looking after the patients and give medicines as per the advice of the doctors. That he being educated person, he was assigned work of getting medicines issued from store of the hospital.

3. Ist party workman submits that Harinandan Prasad was initially employed as a Category I mazdoor in the colliery in 1992, he was junior to the workman by 13 years. However he was given promotion to the post of Ward Boy in Grade H on 17-11-1995. That 1st party workman was superseded by Shri Harinandan Prasad. He has been discriminated in the matter of promotions. It is further submitted that he had passed 8th standard. Shri Harinandan Prasad is illiterate. He managed to get fake certificate of passing matriculation. On such ground, he submits that he may be given benefit of promotion as Ward Boy.

4. IInd party management filed Written Statement at Page 4/1 to 4/6. Claim of 1st party workman is denied outright. That 1st party workman has challenged promotion of Harinandan Prasad, S/o Rohan Prasad from 17-11-95. That 1st party workman was initially appointed on 28-12-77 as tub loader in Dumanhill Colliery of WCL, Chirimiri Area. In 1984, workman sustained injury in his right leg while working underground. Considering his request, he was provided light job as Category I Mazdoor in Damua Colliery Hospital. In 1995 workman named Harinandan was selected to the post of Ward Boy, workman raised dispute. The conciliation has failed. That the workman was never deployed to work as Ward Boy. He has not worked as Ward Boy. Initially he was appointed as tub loader and subsequently he was provided light duty as he met with an accident. He was regularized as Mazdoor Category I. He was granted benefit of SLU by upgradation as General Mazdoor Catgory II, III on fulfilling the norms.

5. IInd party submits that there is no promotional job from General Mazdoor to Ward Boy. The post of Ward Boy is a technical post. It is filled through DPC from eligible time rated candidates. As per cadre scheme for Para-medical staff, Ward Boy so elected is trainee Ward Boy Category I. After selection as Ward Boy trainee and one year training in Hospital, the trainees are so be confirmed as Ward Boy. On availability of sanctioned vacant post and qualifying in Aptitude Test, the workman alongwith 4 others was selected to the post of Ward Boy, Grade H on 28-3-2006. The workman received benefit of upgradation from Category I to II and from Category II to III. All adverse contentions of workman are denied by IInd party. It is submitted that workman cannot compare his case with Harinandan. Both of them were selected through the selection committee on different dates. That workman is not entitled for selection to the post of Ward Boy. That there is no educational bar as per I.I.No. 33 dated 22-6-80. That there is no cadre scheme for General Mazdoor Category to the post of Ward Boy is selection post. The workman was selected to the post of Ward Boy in 2006 after availability of vacant post. On such contentions, IInd party prays for rejection of claim.

6. Workman submitted rejoinder at Page 5/1 to 5/5 reiterating his contentions in Statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My fmdings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the Sub Area Manager, Duman Hill Colliery of SECL, PO Sonamani, Distt. Korea (Chhattisgarh) in not promoting Shri Mohan Dass S/o Shri Amar Das, Category I Mazdoor of the	In Negative

Dumanhill Colliery Hospital *w.e.f.* 1995 and superseding Shri Mohan Das by promoting Shri Hari Nandan, Junior workman from Category I Mazdoor to Ward Boy is legal?

(ii) If not, what relief the workman is entitled to?"

REASONS

8. Workman feeling aggrieved by promotion of Shri Harinandan Category I Mazdoor promoted as Ward Boy from 17-11-95 raised present dispute. IInd party management submits that the post of Ward Boy is a selection post. There is no promotional cadre to General Mazdoor Category-I for promotion to the post of Ward Boy. That workman was selected as Ward Boy in 2006 after the post was found vacant and available. Workman filed affidavit of his evidence. He has stated that he was appointed as tub loader on 28-12-77. In 1978, he was working underground. He suffered injury to his right leg in accident. He was declared unfit for work. That General Mazdoor is promoted as Ward Boy on recommendation of DPC. That he was directed to work as Ward Boy by Dr. Sinha was not on selection by DPC. That why he was working as Ward Boy when he was getting wage of General Mazdoor. He was claiming wage for the post of Ward Boy. Doctors were telling him that he would get increase in wages since 1985 he was doing the work of distribution of medicines. That Harinandan Prasad was working as mazdoor since 1980. He was called as Ward Boy in 1992. He was given promotion without selection by DPC. That the 1st party workman was promoted in 2005. He has faced DPC twice.

9. Management filed affidavit of evidence of Zaafar Mohd. Management's witness states that in 1984, 1st party workman sustained injury in right leg while working underground. His request was considered for light job as Category I, Mazdoor. In 1995, Harinandan Category I, Mazdoor was promoted and selected to the post of Ward Boy. The workman was never deployed to work as Ward Boy and he did not work as claimed by him. In his cross-examination, witness says that workman was working as tub loader. After accident, he was provided light duty in hospital. Harinandan was appointed in 1993 in Category I, workman was appointed in 1977 as tub loader piece rated. That Mohandas workman was senior. He was provided light job in hospital in 1984. Harinandan was working as mazdoor category in hospital in 1986. That the seniority list is not produced on record. That work of Ward Boy was not extracted form workman. Said work was done by Harinandan. It was the reason that the name of workman was not recommended by DPC. That the minutes of DPC from 2007 are missing. The post of Ward Boy is selection post. That General Mazdoor have different scale. Ward Boy has also different cadre scheme. The evidence discussed above is clear that workman is senior to Harinandan Prasad. He was appointed as Ward Boy on 17-11-97. The evidence on record shows that workman was also appointed as Ward Boy in 2006. That the post of Ward Boy is selection post. The management has not produced any documents about educational qualifications of Harinandan Prasad. The evidence of workman remained unchallenged. That he has received education upto 8th standard. Workman is senior to him. No reasons are explained by IInd party why 1st party workman was not considered in 1995 when Harinandan Prasad was appointed as Ward Boy. Copy of cadre scheme is also not produced. Copy of office order dated 28-3-06 on record shows that workman was promoted as Ward Boy on recommendation of DPC. Workman was not promoted while Shri Harinandan junior to him was promoted on 17-11-95. The management has not produced documents about selection of Harinandan Prasad and educational qualifications possessed by him. Therefore, I find substance in grievance of workman.

10. Learned counsel for IInd party Shri Shashi relies on ratio held in—

"Case of Brooke Bond (India) Ltd. *versus* their workmen reported in 1965-I-LLJ-402. Their Lordship held terms and agreement *interalia* providing that other things being equal, seniority shall count for promotion and that for overlooking seniority in promotion the management should furnish reasons to the concerned employee. Overlooking the claim of six employees based on seniority, the management promoting two employees out of which one was No.2 in the seniority list. After a delay of 11 weeks the management stating that the merit suitability and personality of the concerned employees were taken into consideration in promoting the two employees." Their Lordship held proper directions to be made by the Industrial Tribunal in a case where promotions are found *malafide*, indicated the Industrial Tribunal in such could not direct promotion of any particular employee but should direct the management to consider the question of promotion."

Considering ratio in above cited case, the final order needs to be passed. In case of—

"Telecommunication Engineering Service Association (India) and another reported in 1995-II-LLJ-585. Their Lordship dealing with back wages, promotion with retrospective effect held claim for back wages on promotion can be allowed only from date of actual working on higher post. Promotees will be entitled to get refixation of seniority and notional promotion but not arrears of pay and allowances from date of retrospective promotion."

Considering the ratio held, the final award needs to be passed. For the reasons discussed above, I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under—

(1) Action of IInd party management in superseding Shri Mohan Das by promoting Shri Hari Nandan, Junior workman from Category I Mazdoor to Ward Boy is not proper.

(2) IInd party management is directed to consider the claim of 1st party workman for post of ward boy from date of promotion of his junior Harinandan Prasad from 17-11-1995.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 50/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/380/2007-आईआर(सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/380/2007-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/50/2008

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Samyukta Koyla Mazdoor Sangh (AITUC),
CRO Camp Iklehra,
Chhindwara ...Workman/Union

Versus

Chief General Manager, WCL, Pench Area,
PO Parasia,
Chhindwara ...Management

AWARD

(Passed on this 15th day of November 2013)

1. As per letter dated 4-3-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/380/2007-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of M/s. WCL in dismissing Shri Inu w.e.f. 21-2-2006 is legal and justified? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. The workman failed to participate in reference. Statement of claim is not filed by him. Workman is proceeded exparte on 21-1-2011.

3. Management filed Written Statement. IInd party in its written Statement submits that workman was terminated *vide* order dated 21-2-2006. Workman was habitually absent. Chargesheet was issued to him on 21-10-99 under clause 26.24 of the certified standing orders. In enquiry proceedings, the workman remained absent. Workman was absent from duty without leave from 1-10-04. Chargesheet was issued on 14-6-05. Shri T.K. Nikra was appointed as Enquiry Officer, Shri S.K. Gupta was Management's Representative. The details of the enquiry proceeding conducted against workman was given in Para-3 of the Written Statement. The working days of workman are shown. It is submitted that the report of Enquiry Officer holding guilty of charges was considered by Competent Authority. The services of workman are terminated for his proved habitual absence.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of M/s. WCL in dismissing Sh. Inu w.e.f. 21-2-2006 is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

5. As per terms of reference, the termination of service of 1st party workman is challenged. However the workman failed to file his Statement of Claim. He failed to participate in the reference proceeding. IInd party submits that for unauthorized absence the enquiry was held. The misconduct proved as per report of the Enquiry Officer. Consequently the services of workman were terminated. The affidavit of evidence of management's witness Sukhdev Seth also covers all above contentions of the management. The witness of the management is not cross-examined. The evidence remained unchallenged. I do not find reason to disbelieve evidence of management's witness. The copies of chargesheet and enquiry proceeding, termination order are produced and along with list. Thus evidence of management's witness is corroborated from

the documents produced on record. As workman failed to participate, has not filed Statement of claim, therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:—

(1) Action of the management of M/s. WCL in dismissing Shri Inu w.e.f. 21-2-2006 is legal.

(2) Relief claimed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 78/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/307/2003-आईआर(सीएम-II)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2004) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Amlai OCM of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/307/2003 - IR (CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/78/2004

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Mole Prasad Kahar,
Ward No.13,
Near Deepchand Sahu Patel Dairy,
PO & Distt. Shahdol,
Shahdol ...Workman

Versus

Sub Area Manager,
Amlai OCM of South Eastern Coalfields Limited,
PO Amlai, Distt. Shahdol,
Shahdol (MP) ...Management

AWARD

(Passed on this 30th day of October, 2013)

1. As per letter dated 30-6-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/307/2003-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Amlai OCM of SECL in terminating the services of Shri Mole Prasad w.e.f. 11/15-4-98 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed Statement of Claim at Page 6/1 to 6/2. Case of workman is that he was Secretary as General Labour in establishment of IInd party since 8-3-79. Workman was holding Token No. 627. That he rendered his duty continuously with sincerity. Officers of the IInd party are vested with administrative powers IInd party is an industry, 1st party is workman under I.D.Act that workman was suffered from mental illness from 14-11-96. He was receiving treatment at Medical College, Jabalpur. He was not in normal condition. After long treatment for 1½ years, he recovered of his mental condition and has become fit for resuming duties. That during the period of his illness, he had not attended duties regularly. Management of IInd party received chargesheet as per letter dated 2- 2-98. The charges related to habitual absence from duties. That he had submitted medical certificates in his defence alongwith applications for leave. IInd Party No. 1 acted arbitrarily observing that he was not satisfied with the explanation submitted by the workman. That his services were terminated as per order dated 15-4-98. That he is not educated person. The orders and proceedings were for argument. He was unable to understand. He was not facilitated with the translation in Hindi. His explanations and documentary defence was rejected arbitrarily. On such grounds, workman submits that order of his termination from service is void. He may be reinstated.

3. IInd party filed exhaustive Written Statement at Page 8/1 to 8/11. Case of IInd party is that 1st party workman was appointed as piece rated tub loader on temporary basis for a period of 3 months as per order dated 5-3-79. He was initially posted under Manager Amlai Colliery, he was habitual absentee. He has no interest in performing duties. Workman remained absent from duty unauthorisely without intimation or prior permission. Workman was given opportunity to improve since his initial appointment, he failed to work for minimum required period for regular service. The workman was absent during the period 22-3-94 to 4-4-94, warning was issued to him on 5-4-94. He was also issued warnings for his absence from 12-9-94 to 3-12-94. The warnings were also issued *vide* letters dated 6-7-96, 1-10-96. Chargesheet was issued to workman on

16-3-95. Chargesheet No. 745 was issued on 24-9-96. Reply submitted by workman was unsatisfactory. DE was conducted. Shri S.P.Nigam was appointed as Enquiry Officer. Shri A.K.Singh was Management Representative. Enquiry was conducted on various dates. Workman remained absent despite of memorandum issued on 18-6-97 and 25-6-97. Letter by RPAD was sent to him on 4-8-97. Enquiry was fixed on 20-8-97. Workman remained absent on all the date, notice was published in newspaper. As the workman failed to appear, enquiry was conducted exparte. Management adduced evidence of 5 witnesses. Details of the leave period and period of working is shown in the Written Statement.

4. IInd party denied that workman continuously worked with devotion. It is denied that workman worked more than 240 days. It is submitted that workman remained absent from duty without intimation, misconduct is proved from report of the Enquiry Officer. The services are terminated for proved misconduct. On such ground, IInd party prayed for rejection of claim.

5. Workman filed rejoinder at Page 9/1 to 9/3. 1st party workman reiterated its contention in Statement of Claim. That order of his termination of dated 15-4-98 be declared null and void and management be directed to restore his services.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the Sub Area Manager, Amlai OCM of SECL in terminating the services of Shri Mole Prasad w.e.f. 11/15-4-98 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Workman is challenging termination of services. My predecessor has decided Issue No.1 holding that Departmental Enquiry conducted by management against workman is not legal and proper. Management was given opportunity to prove misconduct in Court.

8. Management filed affidavit of witness Shri Gajadhar Gupta. Witness of the management has stated that a Committee was constituted to enquire into the charges leveled against workman. Shri S.P.Nigam Asstt. Manager, Amlai and OCM was appointed as Enquiry Officer and Management Representative respectively. As per G&H review Mole Prasad Token No. 627 was absent from duty without application during the period 30-7-96 to 15-9-96. He had availed 7 days CL in 1994, 11 days CL in 1995, 11 days CL in 1996, 3 days sick leave in 1994, 15 days sick leave in 1995, 15 days sick leave in 1996 and 10 days EL in 1994. In his cross-examination, above witness of the management says that he was working as Leave clerk therefore he knows about the unauthorized absence of workman. The entries about unauthorized absence is marked in H Register. Medical certificate of workman were received on 10-8-94. In Form H register, there is no entry what decision was taken on said certificate. He denied that workman not absent unauthorisedly.

9. Next witness of the management Dharmajan Paniker filed affidavit of his evidence. Said witness says that workman was absent from duty without permission of competent authority during the period 30-7-96 to 15-9-96. He was issued letter dated 28-1-2011. Said witness has shown the working days of workman — 91 days in 1994, 206 days in 1995, 14 days in 1996 etc. the workman again remained absent from 12-9-94 to 1-12-94 unauthorisely. The chargesheet No. 956 dated 1-12-94 was issued under standing orders clause 26.30. The copy of chargesheet Annexure II is produced. Workman submitted reply apologizing for his misconduct. Workman was again issued warning letter dated 1-10-96 for attendance of 28 days during June to August, 1996. Chargesheet No. 745 was issued on 24-9-96. The witness has given details of working days of workman 91 days in 1994, 206 days in 1995 and 166 days in 1996. The details of leave and period of absence given in Para-9 of his affidavit. Workman has shown unauthorized absent of 205 days in 1994, 74 days in 1995 and 112 days in 1996. The chargesheet issued to workman dated 1-12-94 Annexure M-2 is for his unauthorized absence from 12-9-94. The chargesheet was issued on 28-11-94 (corrected date 1-12-94). The chargesheet was not issued for his unauthorized absence of 95 days in 1996. The unauthorized absence shown in his affidavit by the witness in 1995- 206 days, 1996- 166 days,, Management's witness in his cross-examination says that minimum attendance of employees should be 150 days. He denied that there is practice in SECL attending 150 days in a year found unauthorised absent,warning is issued. Office record brought by him contains the fitness certificate of workman issued by Medical College, Jabalpur. He shown his readiness to produce said document. Certificate is produced at Exhibit M-6. Witness was unable to tell what decision was taken on such medical certificate by the management. The fitness certificate was issued subsequently.

10. That public notice was issued, the enquiry was conducted exparte. Document Exhibit M-6 shows that the workman suffered from certain decease during the period 14-11-96 to 3-11-98 subsequent to the period of his unauthorised absence alleged in the chargesheet. The enquiry held against workman is found illegal. Management is given opportunity to prove misconduct. However the evidence of both the witnesses of the management is not clear about unauthorised absence, medical certificate submitted by the workman were not considered, what action

was taken in the medical certificate was not recorded in H Register. The affidavit of witness Shri Gajadhar Gupta shows unauthorized absence of 205 days in 1994. The attendance is shown 306 days. Thus the evidence of both the witnesses of the management about unauthorized absence is not consistent, with the allegation in chargesheet Annexure M-2. If chargesheet M-2 is admitted as it is, the absence of 1st party workman is shown from 12-9-94 and chargesheet prepared on 28-11-94. Thus the period of absence comes to 2 months 16 days. Document Exhibit M-6 shows that the workman was suffering from certain mental illness, what action was taken on said certificate is not known as per evidence of Management's witness Paniker. Therefore his absence cannot be said unauthorized.

11. Learned counsel for workman relies on ratio held in —

> "Case of Krushnakant B Parmar versus Union of India and another reported in 2012 (132) FLR-1023. Their Lordship dealing with unauthorized absence from duty finding recorded by the Inquiry Officer that appellant was unauthorisedly absent from duty but failed to hold that the absence was willful. specific case of appellant that he was prevented by DCIO from attending duty. DCIO did not appear before Inquiry Officer inspite of service of summons. Other witness did not make statement against the appellant. Their Lordship held that absence from duty without prior permission amount to unauthorized absence. Such absence not always willful such as a result of compelling circumstances. Disciplinary Authority required to prove that absence is willful. In absence of such finding absence will not amount to misconduct."

In the present case, evidence of both the witnesses of management doesnot show the absence of workman was willful.

12. Learned counsel for IInd party relies on bunch of citations. In case of—

> "Shri A.M. Eashwarachar versus Executive Engineer (Electrical) reported in 1995-I-LLJ-1065. Their Lordship dealing with habitual absence held though a strong plea was made on behalf of petitioner that some minor penalty be awarded and the petitioner be reinstated having regard to the nature of misconduct, the petitioner is totally disqualified for any such relief. However the order of dismissal does appear to be too harsh in so far as the petitioner would be deprived of whatever few benefits might have accrued to him by virtue of his earlier service and more importantly it may act as a bar for employment elsewhere. In such circumstances, the order of dismissal shall stand modified to one of termination."

In case of Mithilesh Singh versus Union of India and others reported in 2003(3) Supreme Court Cases 309 . Their Lordship held dealing with the case of member of Armed Forces and oposted in a terrorist affected area proceeding on leave without proper intimation and permission. Also leaving his arms and ammunition unguarded and not in proper custody. Punishment of removal which was statutorily prescribed. Held on facts was not disproportionate to the offence committed.

The facts of above cited case are not comparable with the present case. The ratio cannot be applied to the present case at hand.

Next reliance is placed on ratio held in case of Punjab and Sind Bank versus Sakattar Singh reported in 2001-LAB. I.C.301. Their Lordship dealing with Para-522 of Sastry Award termination of services of Bank employee for unauthorised absence beyond prescribed limit held employee not intending to join nor offering any explanation regarding his unauthorised absence. Presumption drawn under rule that employee stands retired from service. Order terminating his services not punishment for misconduct.

The present case relate to Bank employee covered by Sastry Award therefore the ratio cannot be applied to present case. The present case doesnot relate to voluntary retirement on account of unauthorized absence.

Next reliance is placed on Hindustan Paper Corporation and Purnendu Chakroborty and others reported in 1997-II-LLJ-704. The above cited case relates to Rule 23(vi) E and 25 Loss of lien on appointment by employee proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8 consecutive days and overstaying his sanctioned leave beyond the period originally granted or subsequently extended for more than 8 consecutive days."

The facts of the present case are not comparable and therefore ratio in above case cannot be applied to case at hand.

Reliance is also placed in ratio held in case of Eveready Industries India Ltd. Jabalpur and others versus Shri P.S. Parihar and another reported in 2003 (3) M.P.H.T. 257. His Lordship considering that employee was appointed by company on 26-2-77. He was given light work at his request because of his poor health. He was inefficient. His work was unsatisfactory. He used to remain absent from duty. He behaved in an indisciplined manner. He did not improve. He was given one month's wages in lieu of notice and his services terminated on 11-12-97. His

Lordship held form documentary evidence, it is evident that respondent No.1/employee remained absent for a long time. He committed various irregularities in handling the trade. He did not take interest in the work. Hence there was reasonable cause for dispensing with his services."

The facts of present case are not comparable. The management's witness admitted that the workman had produced medical certificate. No entry was taken in H Register, what action was taken with regard to said certificate is not known.

Reliance is also placed in ratio held in Case of Syndicate Bank versus General Secretary, Syndicate Bank Staff Association and another reported in 2000-1-LLJ1630. Said case pertains to 4th Bipartite Settlement between Syndicate Bank and employees. Clause 16 unauthorised absence of morethan 90 days deemed to have taken voluntary retirement.

The present case doesnot relate to such settlement or deemed voluntary retirement therefore the ratio held in the case cannot be beneficially applied to the case at hand.

13. Considering the allegation in chargesheet and absence from duty not willful, the punishment of dismissal from service is not appropriate. Therefore action of management is not justified. For above reasons, I record my finding in Point No. 1 in Negative.

14. **Point No. 2**- In view of my finding that action of the management is not legal, the question arises to what relief the workman is entitled? As per chargesheet issued, the workman was absent, he had not submitted application, the workman claims to be suffering from mental illness. The Certificate M-6 is produced is for subsequent period. Considering the facts of the case and the period of absence from duty, in my considered view, order of dismissal cannot be sustained. The reinstatement of workman without back wages would be appropriate in the ends of justice. Accordingly I record Point No. 2.

15. In the result, award is passed as under:—

(1) Action of the Sub Area Manager, Amlai OCM of SECL in terminating the services of Shri Mole Prasad *w.e.f.* 11/15-4-98 is not proper.

(2) IInd party is directed to reinstate workman but without back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 202.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार मैसर्स सी डब्ल्यू सी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 176/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/34/2001-आई आर (सी-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.176/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur, as shown in the Annexure, in the industrial dispute between the management of Central Warehousing Corporation, and their workmen, received by the Central Government on 27/12/2013

[F.No. L-42012/34/2001 -IR(C-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/176/2003
PRESIDING OFFICER: SHRI R.B.PATLE

Shri Manoj Singh Chandel & Others,
Vill & PO Baganta,
Distt. Chhatarpur, .
Chhatarpur (MP) .....Workman

Versus

The Manager,
Central Warehousing Corporation,
Branch Chhatarpur,
Chhatarpur (MP) .....Management

AWARD

(Passed on this 18th day of November, 2013)

1. As per letter dated 9-10-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/34/2001-IR(C-II). The dispute under reference relates to:

"Whether the action of the management of Central Warehousing Corporation in terminating the services of S/Shri Manoj Singh Chandel, S/o Late Phool Singh Chandel and Mazbook Ahmad S/o Vahid Ahmad Siddique, Security Guards is legal and justified? If not, to what relief they are entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 4/1 to 4/5. Case of 1st party workman is that they were appointed on vacant post as security Guard by the management of Central Ware House, Branch Chhatarpur on 1-9-96 therefore intermediary contractor i.e. BSA Industrial Security India- IInd party No.2. that as per agreement and terms and conditions of contract, the IInd party 6 No.2 BSA were required to be deemed in service of security guard till their age of superannuation. IInd party was required to provide service of security guard. The overall control was with Ware Housing Corporation Manager. That they were performing their duties satisfactorily. They continuously worked from 1996 to 1998. That their services were abruptly discontinued from 8-7-98 in violation of principles of natural justice. That their services are terminated in violation of Section 25-F,a,b of I.D.Act, They are illegally retrenched. On such grounds, workman prays for their reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 7/1 to 7/9. The preliminary objection is raised by IInd party that there is no employer/employee relationship. The reference is illegal and bad in law. Central Govt. should not have decided disputed questions. IInd party submits that the dispute relates to reinstatement and other benefits claimed on the ground of illegal termination of services. Ware Housing Corporation is not concerned with reliefs prayed by workman. Their services are not terminated by IInd party. They were not appointed or terminated by IInd party. That as per policy of Govt. of India, the reservation policy is obligatory on IInd party. The reservation for SC, ST, OBC is required to be followed. Ex servicemen are required to be appointed as security guards. That as per Ministry of Industrial Department, it is mandatory on part of public sector undertakings to approach DGR for appointment of security guard out of panel maintained by DGR. That as per the conditions mutually agreed, principal employer and security agency, the DGR guidelines concerning security agencies and wage structure enclosed and the same are required to be followed. That the agency had agreed to provide security guards desired by corporation from 16- 7-97 for 3 1/2 years. Other terms and conditions are narrated in Para-12 of the Written Statement. The security guard has to engage ex- servicemen personnel as per the contract with Ware House Corporation. That Corporation neither appointed 1st party No.1,2 nor terminated their services. The claim is not tenable against IInd party. All other contentions of Ist party are denied. IInd party claims for rejection of claim of workman.

4. Application for impleading BSA Industrial Security was filed by 1st party workman and the same has been rejected.

5. Rejoinder is filed by 1st party at Page 12/1 to 12/2 reiterating their contentions that their services are terminated in violation of Section 25-F of I.D.Act. that they are covered as workman under Section 2(s) of I.D.Act.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Central Warehousing Corporation in terminating the services of S/Shri Manoj Singh Chandel, S/o Late Phool Singh Chandel and Mazbook Ahmad S/o Vahid Ahmad Siddique, Security Guard is legal ?	The workmen are not terminated by Central Ware Housing Corporation.
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workmen are rejected.

REASONS

7. 1st party No.1,2 are challenging termination of their services as Security Guard for violation of Section 25-F, H of I.D.Act, affidavit of evidence is filed by 1st Party No. 1 Manoj Singh Chandel. He has stated that on 1-9-96, he was appointed as Security Guard against vacant post through contractor BSA. That his services are terminated without reasons. Retrenchment compensation is not paid, notice is not issued for termination of service. The termination is in violation of Section 25-F, H of I.D.Act. In his cross-examination, he says that he was appointed by Shri M.S.Siddiqui, Ware House Manager orally. The Manager was not acquainted with him. He was called by CWC Manager saying the post was vacant, Manager met him while passing on road., he claims ignorance whether his name was sponsored through Employment Exchange, That Mr. Siddiqui had interviewed him. In his further cross-examination, workman says BSA Agency had employed several persons for security of godown. He was not acquainted with any of them. He denied that CWC had not appointed him as security guard. He denies that he was engaged by BSA Agency. He denies that his salary was paid by BSA Agency. He was receiving salary Rs.2200/- salary was paid by clerk Vishwakarma of CWC .

8. Maqbool Ahmed 1st party No.21 also filed identical affidavit and both workmen have claimed that they were working more than 240 days in each of calendar year 1996 to 1998. Maqbool Khan in his cross-examinatin says the post was not advertised in newspaper, his name

was not sponsored through Employment Exchange. The contractor Govind Singh had employed him in 1996. That BSA Agency had submitted tendor for security guards. The evidence adduced by workman clearly shows that they were engaged through contractor. The contractor is not included as party. The evidence of management's witness J.V.Bendre is on the point that both the workmen were engaged by contractor. 1st party workman were not terminated by CWC. The pleadings and evidence of 1st party workman is silent that the contract between Principal Employer and contractor BSA Agency was not genuine or it was camouflage. In absence of such evidence, there is no relationship of employer employee between workman and IInd party. The documents produced by IInd party Exhibit M-1 to M-2 clearly shows that workman were engaged through contractor. The services of workmen are not terminated by IInd party. Therefore the contentions of workman about termination of their services by IInd party in violation of Section 25-F, H of I.D.Act cannot be accepted.

9. Learned counsel for 1st party workman submitted copy of Judgment in Appeal No. 10863/96 and 10541/96 in support of the claim of 1st party workman. The facts of present case are entirely different. The workmen were engaged through contractor. The contractor is not impleaded as party. Rather application of IInd party for impleading contractor as party, the reference was opposed by workman. The evidence of management's witness Mrityunjay Verma on the point that workmen were engaged through contractor BSA Security is not shattered. Therefore for want of employer employee relationship, I record my finding on Point No.1 that IInd party has not terminated services of 1st party workman.

10. In the result, award is passed as under:—

(1) Services of 1st party workman No.1,2 are not terminated by IInd party Central Ware Housing Corporation. There is no point of violation of Section 25-F, H of I.D.Act.

(2) Relief prayed by workmen are rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 193/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/374/1990-आई आर (सी-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.193/95) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 27/12/2013

[F. No. L-22012/374/1990 -IR (CM-II)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/193/95

PRESIDING OFFICER: SHRI R.B.PATLE

Shri D.N.Tripathi,
Lal Jhanda Coal Mines Mazdoor Union(CITU),
Head Office, Damua,
Distt. Chhindwara .....Workman/Union

Versus

General Manager,
WCL, Kanhan Area,
Post Dungaria,
Distt. Chhindwara (MP) .....Management

AWARD

(Passed on this 29th day of October, 2013)

1. As per letter dated 20-10-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/374/90-IR(C-II). The dispute under reference relates to:

> " Whether the action of the management of WCL, Kanhan Area for reversion of Shri Atmaram S/o Chiraunji w.e.f. 10-5-87 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at page 4/1 to 4/3. Case of 1st party workman is that he was working on the post of DPR from 1978. From 1980, he was working as loader on promotion. In March 1987, he was transferred to Rakhikol Colliery as tub loader. The management was in need of JCB Operator. 1st party workman was holding licence of driving. He had also

experience of driving. He was orally appointed as JCB Operator. Said post was of permanent nature as the 1st party workman was holding eligibility and qualification, he was appointed as JCB Operator. He was continuously working on said post from 4-3-87 till 9-5-87. He had taken entries in log book. Workman and his co-employee were appointed as JCB Operator/driver. On 10-5-87, without prior notice, his services were changed. He was directed to work as tub loader. That he was appointed as JCB Operator on probation. After he was discontinued from post of JCB Operator, other employees were appointed on said post. The management had made alterations in the registers to show favour to other employees. The action of the management discriminating him from work for JCB Operator is illegal. On such grounds, he prays for reinstatement with consequential benefit on the post of JCB Operator.

3. IInd party filed Written Statement at Page 7/1 to 7/5. Claim of 1st party workman is opposed by management. The management had denied all material contentions of the workman. RKKMS Union had not raised the dispute. The dispute has been raised by CIRU Union. That workman cannot be member of 2 Unions. ALC overruled the objections. The dispute was taken into conciliation. The same ended in failure. The Government had referred the dispute for adjudication.

4. IInd party submits that workman was appointed as tub loader at Rakhikol Colliery of Damua Sub area. He was transferred to Damua Colliery as tub loader *vide* order dated 4-3-87. He was subsequently allowed to resume duty in JB Incline of Damua Colliery. Since June 1987, 1st party workman was working as tub loader. The terms and conditions of employment of coal mine workers are covered by NCWA exhibited time to time. There is no job nomenclature of JCB operator of NCWA. The job designation is Driver. Management cannot ask workman to perform in a particular post which is not in existence. That the workman was piece rated workman. He was never engaged to work as Driver on any of the vehicles. The promotions are given as per the policy laid down in cadre scheme by DPC. That promotion cannot be claimed as a right, the same are based on various circumstances available of posts etc. It is reiterated that workman was employed as tub loader. He never worked as JCB Operator. Such post is not existing. The relief prayed by workman cannot be allowed. IInd party prayed for rejection of claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of WCL, Kanhan Area for reversion of Shri Atmaram S/o Chiraunji w.e.f. 10-5-87 is legal and justified ?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Though workman is challenging his reversion from the post of JCB Operator w.e.f. 10-5-87, he has failed to adduce evidence in support of his contentions in Statement of claim. 1st party workman has not properly participated in the reference proceeding. The management filed affidavit of evidence of its witness Shri A.C.Kaushik . Management's witness has stated most of the facts covered in the Written Statement filed by the management that there is no post of JCB Operator. That promotions cannot be claimed as a right. The promotions are given on recommendation of DPC as per cadre scheme. Workman was working as tub loader. He is not discriminated. The evidence of management's witness remained unchallenged. I donot find reason to discard his evidence. Workman has not adduced any evidence to establish illegality in the act of the management. Therefore I record my finding on Point No.1 in Affirmative.

7. In the result, award is passed as under:—

(1) Action of the management of WCL, Kanhan Area for reversion of Shri Atmaram S/o Chiraunji w.e.f. 10-5-87 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 204.—औद्योगिक अधिसूचना विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 253/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/429/1998-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 253/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India,

and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/429/1998-IR (CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/253/99
PRESIDING OFFICER: SHRI R.B.PATLE

General secretary,
M.P.Gadiwahan Hamal Reza Mazdoor Mahasang,
Station Road, Mahasamund (MP) ...Workman/Union

Versus

District Manager,
Food Corporation of India,
District Office,
Kutchery Chowk,
Raipur

AWARD

(Passed on this 25th day of October 2013)

1. As per letter dated 29-6/9-7-1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/429/98/IR(CM-II). The dispute under reference relates to:

> "Whether the demand of the M.P.Gadiwahan Hamal Reza Mazdoor Mahasang for regularization of 101 workers of Mahasamund Depot. Under District Manager, FCI, Raipur w.e.f. 1-4-94 is justified? If not, to what relief the workmen are entitled?"

2. After receiving reference, notices were issued to the parties. 1st party Union filed Statement of Claim at Page 2/1 to 2/3. Case of 1st party union is that 101 labours shown in Schedule A were working in godowns of the IInd party at Mahasamund. The period of their working is shown in the schedule. The conciliation proceeding was initiated before ALC, Raipur for regularization. 63 employees shown in Schedule B, employees at Sl. No.44 to 60 were out of State. They were shown junior to the 63 employees shown in Schedule A. Despite of it, those employees were regularized on failure report submitted by ALC, the dispute has been referred. The Union submits that from 1-4-94, direct payment scheme was introduced in Mahasamund depot of FCI, 63 employees shown in Schedule-B were regularized. Those 63 employees were mates, were treated as contractor's employees. That 101 employees represented by the Union were contract labours holding licence under Contract Labour (Regulation and Abolition) Act, 1970. They were not regularized by IInd party. The denial of regularization of those 101 labours is illegal. It is further submitted that out of 63 employees annexed in schedule B, 36 employees were of 1st party Union. GPF of those 36 employees was deducted by the 1st party union as per the statement. On 29-8-88 IInd party treated Jagdish Bakshi as made/contractor. That the employees at Sl. No.110, 145, 146 to 149 were at Schedule "S" have never worked were regularized in service. 101 employees in Schedule A are entitled for regularization. Accordingly the Union is praying for regularization of 101 employees shown in Schedule A.

3. IInd party filed Written statement opposing claim of Union, IInd party submits that it is constituted under FCI Act, 1964 as such the statutory corporation which deals in import, procurement, storage and distribution of the food grains throughout the country. The management of FCI usually appoints handling and transport contractors at various depots including Mahasamund. The said contractors used to engage labours and get work from them. FCI has no administrative control over such labours engaged by contractors. Present dispute filed by Union pertains to workman engaged by contractors at Rail Head at Mahasamund for regularization of 101 workers. All these labours appears to have been appointed by transport contractors of the Rail Head. They were not engaged by FCI. There is no employer employee relationship. There is no administrative control of FCI on those labours.

4. Earlier transport contract of Rail Head of Mahasamund was awarded to Shri Jagdish Bakshi from 5-7-88 to 7-7-90 prior to completion of said contract, Jagdish Bakshi expired in May 1989. Said contract was given to M.P.Gadiwahan Hamal Reza Mazdoor Mahasang on adhoc basis. On 26-9-89, made system was introduced and agreement was entered between management of FCI and workers Union through mate system Shri Mahesh Mahto and others. Under the said agreement, Workers Union had to nominate made in the depot which in turn execute the agreement with the District Manager. In pursuance of Agreement dated 1-11-94 between FCI and Union for direct payment system, the strength of workers was to be assessed for operations during preceding 3 years. The demand of the Union for regularization of workers doesnot arise.

5. Government had declined to refer dispute. In Writ Petition No. 28760/96 filed by Union, the dispute is referred. The claim for regularization is not legal. It deserves to be dismissed. All adverse contentions of the Union are denied. The workers of transport contractors cannot be equated with the workers working with the godowns of FCI under Direct Payment system. There is no question of payment of benefit to them. On such ground, management prays for rejection of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for

the reasons as below:—

(i)	Whether the demand of the M.P.Gadiwahan Hamal Reza Mazdoor Mahasang for regularization of 101 workers of Mahasamund Depot. Under District Manager, FCI, Raipur w.e.f. 1-4-94 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	Demands of Union are rejected.

REASONS

7. Though the dispute is referred for adjudication relating to regularization of 101 employees in FCI, 1st party Union filed Statement of claim. However Union failed to participate in the reference proceeding. The Union has not adduced evidence in support of its demands. The evidence of Union is closed on 14-9-2011. The management has filed affidavit of Shri Anil Kumar Namdev and Shri Shambhunath Mishra. Union failed to cross-examine the witness of management. Both witnesses of management supports the contentions of management of FCI. In absence of any evidence in support of the demands of the Union, the demands cannot be accepted. For above reasons, I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:—

(1) The demand of the M.P.Gadiwahan Hamal Reza Mazdoor Mahasang for regularization of 101 workers of Mahasamund Depot. Under District Manager, FCI, Raipur w.e.f. 1-4-94 is not justified.

(2) Demand of Union is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2013

का॰आ॰ 205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 67/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-22012/12/2009-आई आर (सीएम-II)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 27th December, 2013

S.O. 205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 67/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 27/12/2013.

[F. No. L-22012/12/2009-IR(CM-II)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/67/2009
PRESIDING OFFICER: SHRI R.B.PATLE

Shri Manoj,
S/o Ram Bhau Sande,
Sulbha,Near Pandit Deendayal High School,
Dhantauli,
Nagpur ...Workman

Versus

Chief General Manager,
Western Coalfields Limited,
Kanhan Area, PO Dungaria,
Chhindwara ...Management

AWARD

(Passed on this 28th day of November, 2013)

1. As per letter dated 1-7-2009 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/12/2009-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the management of M/s. WCL in not providing employment to the dependant of Late Shri Ashok Sande S/o Shri Ram Bhau Sande, the ex-workman is legal and justified? To what relief is the claimant entitled for?"

2. After receiving reference, notices were issued the parties. Case of 1st party claiming to be dependent of deceased workman has filed Statement of Claim at Page 3/1 to 3/5. The case of Ist party is that deceased Ashok Kumar Sande was appointed in compassionate ground after death of his father Ram Bhau Sande in Ghorawari Colliery. That Ashok Kumar Sande was continuously working from 1980 till 1982. He was transferred from Ghodawari Colliery to Nandanwari colliery on 22-6-82. On 22-6-82, he left his house for attending his duty and thereafter his whereabouts were not known. That Ashok Kumar was appointed on permanent vacant post of LDC. Since 23-6-82, his whereabouts were not known. Report was submitted to Police Station. After sometime in place of Ashok, his brother applied for appointment on compassionate ground. 1st party had submitted application for employment but

nothing was heard. 1st party further submits that nothing was heard and lastly he was informed to obtain decree from the court of law that his brother Ashok Kumar Sande is dead. That assurance was given to him by IInd party that if application is filed before Competent Court for declaration that Ashok Kumar is dead, thereafter the Court has declared Ashok Kumar as dead.

3. It is further submitted that after declaration of Ashok Kumar Sande as dead, 1st party being his younger brother is entitled to get appointment on compassionate ground. That 1st party was dependent on Ashok Sande. The rules of the department provides compassionate appointment to the deceased. Therefore 1st party claims to be entitled for appointment on compassionate ground. It is further submitted that refusal by IInd party to provide employment is unfair labour practice. The act is by victimization in colorable exercise of powers as such illegal. 1st party further submits that he is also entitled to terminal benefits for period of 23 years. That no enquiry was held against Shri Ashok Sande. The termination order filed by IInd party was without issuing chargesheet or conducting enquiry. The document is fabricated. On such ground, 1st party prays direction to provide employment on compassionate ground.

4. IInd party filed Written Statement at Page 7/1 to 7/7. Claim of 1st party is totally denied. Preliminary objection is raised that the dispute is not tenable under Section 2(k) of I.D.Act. 1st party is not workman under section 2(s) of I.D.Act. There is no employer employee relationship. That reference is not tenable under Section 2(k) for employment on compassionate ground. All other contention of Ist party are denied. IInd party submits that except transfer of Ashok Sande, S/o Ram Bhau , contentions in Para-2 of statement of Claim are incorrect that Ashok Sande was on his transfer from Ghorawari Colliery was released on 16-6-1982 by the Manager. He did not join Nandan Colliery. He remained unauthorisely absent without permission. The unauthorised absence is covered as misconduct under clause 26.30 of standing order. That Ashok Sande has not challenged said order of termination filing appeal provided under Clause 30 of the standing orders. The 1st party is not entitled to employment on compassionate ground as Ashok Sande was terminated from service in 1983. That Ashok Sande has died during continuity of service. That Ashok Sande was not interested in continuing service as he did not challenged the order of his termination dated 8-3-83. That Ashok was declared dead in 2007 after lapse of 25 years. 1st party is not entitled to appointment on compassionate ground. All other material contentions of 1st party are denied.

5. 1st party filed rejoinder covering contentions in Statement of Claim and prays that he is entitled for appointment on compassionate ground to the dependent of Ashok Kumar Sande.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of M/s WCL in not providing employment to the dependant of Late Shri Ashok Sande S/o Shri Ram Bhau Sande, the ex-workman is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Claim of 1st party workman is rejected.

REASONS

7. 1st party claiming to be brother of Ashok Sande is claiming employment on compassionate ground contending that whereabouts Shri Ashok Sande were not known after 23-6-82. He was declared dead by Civil Court. He is dependent of Ashok and as such entitled to appointment on compassionate ground as per rules and regulations of IInd party. All above contentions are denied by IInd party. It is contended that services of Ashok Sande was terminated for unauthorized absence as per order dated 8-3-83. Ashok Sande is declared dead after long lapse of 25 years. Ist party was not dependent on him.

8. 1st party filed affidavit of evidence covering most of his contentions in Statement of Claim. That Ashok Kumar Sande was working in Ghorawari Colliery in 1980. In June 1982 he was transferred to Nandan Colliery. He had joined duty at Nandan on 22- 6-82. On 23-6-82, Shri Ashok Kumar Sande left home for joining duty but did not returned back. His whereabouts were not known. Report was submitted to police. That Civil court has declared Ashok Sande dead. He claims to be dependent. He is entitled to terminal benefits on death of Shri Ashok Sande. The claim related to terminal benefits is not been referred. Said pleadings and evidence on the said points is beyond the terms of reference. Workman has produced documents Exhibit W-1 to W-7. In his cross-examination, 1st party says that Ashok was his elder brother. That they are two brothers and two married sisters. Their mother is alive. On 23-6-82, Ashok Sande had gone for his work. At that time, he was of 14-15 years of age. That they were residing in quarter of Nandan Mine for one year. The quarter is at Hatta but there is no coal mine at Hatta. The arguments produced by workman. Exhibit W-1 is copy of application submitted by his mother for employment of 1st party on compassionate ground dated 10-5-95. The application was submitted after almost 13 years. Exhibit W-2 is replication of Exhibit W-1. Exhibit W-3 is certificate issued by Gram Panchayat Sarpanch that Ashok Sande was missing from 1982. Exhibit W-4 is letter dated 4-9-94 sent by Suptd. Of Nandan Mines to mother of 1st

party informing that the services of Ashok Sande were terminated from 8-3-93. Exhibit W-5 is copy of notice issued to police station, Junnardeo. W-6 is copy of judgment in Civil Suit 104/06 by Civil Court, Chhindwara. Shri Ashok Sande was declared dead as the whereabouts were not known. Exhibit W-7 is application submitted by 1st party to the Manager to IInd party dated 19-5-07 requesting appointment on compassionate ground. Exhibit W-8 is also similar application submitted by 1st party.

9. Similar set of documents produced by 1st party are exhibited twice. Management filed affidavit of evidence of Miling Ganveer stating that services of Ashok Sande were terminated from 9-3-83 for unauthorized absence. That no appeal was filed under Clause 30. That 1st party is not entitled to employment on compassionate ground. In his cross-examination, management's witness says that he does not know the details for appointment of Ashok Sande. That he was working in Nandan Mine from 2005. In his further cross-examination, he admits that from 23-6-82, Ashok Sande was missing, letter was given by the office. That services of Ashok Sande were terminated as per Standing orders. He claims ignorance whether Departmental Enquiry was held. He claims ignorance about notice issued to Shri Ashok Sande. He admits that Ashok was declared dead by Court *vide* order dated 25-4-07. That Manoj sande and widow of Ashok submitted application for appointment on compassionate ground and dues. Said application was forwarded to the office. He claims ignorance whether salary for the period 1-6-87 to 22-6-82 was paid to the workman. LR of Ashok Sande has submitted application for payment of dues. Ashok was terminated from service on 9-3-83.

10. IInd party produced documents. Exhibit M-1 is transfer order dated 15-6-82, name of Ashok is appearing in the order at SI. No.17. Exhibit M-2 is letter requesting guidance in the matter from department. Exhibit M-3 is letter received from Personal department that employment on compassionate ground cannot be provided to the LRs of the terminated employees. Exhibit M-4 is copy of standing orders. Clause 26.30 deals with misconduct of absence from duty without sanctioned leave etc. Clause 24 provides for termination of permanent workman having less than 1 year service. Exhibit M-5 is letter given by Manager, Nandan Colliery. That after his transfer, Ashok Sande has not joined duties at Nandan Mines. Exhibit M-6 is also letter given by Manager, Nandan Mines to Police Station informing that Ashok Sande has not joined duty after his transfer from Ghorawari colliery on 15-6-82.

11. The evidence of management's witnesses and documents produced on record clearly shows that Ashok Kumar Sande was terminated form service on 9-3-83. 1st party has not challenged legality of termination order. It is clear from the documents and evidence on record that when Ashok Sande was declared dead in the year 2007, he was not in service. His services were terminated long back on 9-3-83. 1st party has not produced any rules on record regarding securing employment on compassionate ground to the LRs of he employees terminated from service. The evidence further shows that application for compassionate appointment was submitted in 1985 and Shri Ashok Kumar was missing from 1983, report was not immediately submitted to the police.

12. Learned counsel for IInd party relies on ratio held in

> "Case of I.G.Karmik and others versus Prahalad Mani Tripathi reported in 2007 SCC 162. Their Lordship of the apex Court dealing with compassionate appointment and eligibility held compassionate appointment cannot be granted to a post for which the candidate is ineligible even though higher post was applied for on compassionate ground, when a lower post offered considering qualification and eligibility as per rules was accepted by the candidate, he cannot later again claim appointment to the higher post."

Ratio held in the case has no bearing to controversy in present case.

Next reliance is placed in ratio held in

> "Case of General Manager State Bank of India and others versus Anju Jain reported in 2009-I-LLJ-319(SC). Their Lordship dealing with compassionate appointment held Disciplinary proceedings initiated and employee punished. It is relevant consideration for not extending benefit of such appointment to dependent employee dying in harness."

In present case, the services of Ashok Sande were terminated on 9-3- 83. The Order of termination is challenged by the workman. The rules providing employment on compassionate ground to the LRs of deceased employee are not produced by 1st party. In its absence, the claim of 1st party not substantiated. Therefore I record my finding in Point No. 1 in Affirmative.

13. In the result, award is passed as under:—

(1) Action of the management of IInd party in not providing employment to the dependent of Shri Ashok Sande is proper.

(2) 1st party is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का॰आ॰ 206.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार आयुक्त, दिल्ली नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰–1 नई दिल्ली पंचाट संदर्भ संख्या

159/2012 को प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/37/2012-आईआर(डी॰यू॰)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.159/2012) of the Central Government Industrial Tribunal/Labour Court No.1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, MCD and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-42012/37/2012-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, DELHI

I.D. No.159/2012

Smt. Lachcho W/o Late Sh. Suraj Bhan

Through Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi. ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110006. ...Management

AWARD

Smt. Lachho Devi was engaged as safai karamchari by Municipal Corporation of Delhi (in short the Corporation) on muster roll. Subsequently, as per its policy, the Corporation regularized her services on the post of safai karamchari, *vide* its order No. 584/AC/AO/HQ/DAV dated 08.06.2007 with effect from 01.04.2006. She belaboured under a belief that her services ought to have been regularized with effect from 12.09.2001. She approached the Nagar Nigam Karamchari Sangh, (in short the union) for redressal of her grievances. The Union raised a dispute before the Conciliation Officer. Since the claim was contested by the Corporation, hence conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42012/37/2012-IR(DU) New Delhi dated 09.11.2012 with following terms

"Whether action of the management of Municipal Corporation of Delhi (MCD) in denying regularization of services of Smt. Lachho, W/o late Suraj Bhan in proper pay scale with all consequential benefits from the date she was appointed on compassionate grounds as safai karamchari, *i.e.* 12.09.2001 is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Smt.Lachho opted not to file her claim statement with the Tribunal.

3. Notice was sent to Ms. Lachho by registered post on 03.12.2012, calling upon her to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to her through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to herby registered post on 02.01.2013 calling upon her to file claim statement before the Tribunal on 29.01.2013. Notice was again transmitted to the claimant by registered post on 30.01.2013 asking her to file her claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation projects that the claim is not maintainable since no notice of demand was served on it prior to raising the dispute. It has further been projected that the dispute is not maintainable since it has not been espoused by a union or considerable number of workmen. The Corporation projects that Smt. Lachho Devi has been regularized in service with effect from 01.04.2006, as per its policy. She has accepted the offer of regularization and joined her services with the Corporation. Dispute raised is not liable to be entertained, pleads the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments.

Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. [1968 (I) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd. [1970 Lab.I.C.421], High Court of Delhi went a step ahead and held that "...demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd. (1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists [1961 (II) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal [1978 (I) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In New Delhi Tailor Mazdoor Union [1979 (39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in Management of Needle Industries [1986 (I) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists (supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the

management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984 (II) LLJ 259].

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person:"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause(s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (I) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute

need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute", concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them, Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

24. For claim of regularization in service, it was incumbent upon the claimant to establish that she was appointed by the Corporation with effect from 12.09.2001 against a substantive post. As projected by the Corporation, she was engaged as a daily wager and her services were regularized as per policy applicable to her. She has been regularized as safai karamchari, *vide* Order No. 2518/AC/DA/HQ dated 07.05.2007 with effect from 01.04.2006. Thus, out of facts projected, it is evident that the claimant has been regularised in service by the Corporation. She could not establish that she was entitled to be regularized in service by the Corporation on 12.09.2001. Her claim is not maintainable on factual proposition too.

25. The foregoing reasons make me to conclude that Smt. Lachho is not entitled to regularization in the service of the Corporation. Action of the Corporation in denying regularization in its service to Smt. Lachho is found to be justified. No relief can be granted in favour of Smt. Lachho. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Date 29-11-2013.

नई दिल्ली, 30 दिसम्बर, 2013

का॰आ॰ 207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ़ डेल्ही के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय देल्ही के पंचाट (संदर्भ संख्या 167/2012) प्रकाशित करती है, जो केंद्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/66/2010-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.167/2012) of the Central Government Industrial Tribunal/Labour Court 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi, Delhi and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-42012/66/2010-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, DELHI

I.D. No.167/2012

Shri Ishwar Singh
S/o Shri Jai Lal,
Through The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi. ....Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110006. ....Management

AWARD

A chowkidar employed by Municipal Corporation of Delhi (in short the Corporation) claimed payment of

overtime allowance, since he was made to work beyond normal duty hours. His claim was not conceded to by the Corporation. He approached the Nagar Nigam Karamchari Sangh (Delhi) (in short the union) for redressal of his grievances. The union served notice on the Corporation seeking overtime allowance for duties performed in excess of normal working hours, wages for weekly holidays, gazetted holidays and casual leaves, which notice was not responded to. A dispute was raised before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42012/66/2010-IR(DU) dated 16/21.11.2012, with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi (MCD) in denying encashment of wages of weekly holiday, gazetted holidays and casual leave which are not availed by the workman, Shri Ishwar Singh, S/o Shri Jai Lal, ex-Chowkidar as the same are spent on duty during the period of service rendered by the workman with the MCD is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Chowkidar, namely, Shri lshwar Singh opted not to file his claim statement with the. Tribunal.

3. Notice was sent to Shri lshwar Singh by registered post on 03.12.2012, calling upon him to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 02.01.2013 calling upon him to file claim statement before the Tribunal on 29.01.2013. Notice was transmitted to the claimant by registered post on 31.01.2013 asking him to file his claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation filed its response, pleading therein that the dispute was not properly espoused by the union, hence liable to be rejected. It further asserted that the dispute has been raised at a belated stage, hence it became stale. The Appropriate Government cannot refer such a dispute for adjudication, as it has become stale. The dispute is liable to be rejected on this count also, claims the Corporation.

6. The Corporation projects that claimant was getting overtime allowance @ Rs. 625.00 upto a maximum of 50 hours in a month in accordance with circular dated 15.03.1997. For work performed on Sundays and holidays, the chowkidars gets compensatory leave in lieu thereof, hence not entitled to overtime allowance. Chowkidars are entitled to 15 days casual leave, 3 national holidays and 6 other holidays of their choice in every calendar year. Their normal duty hours are 10 hours per day and previously chowkidars were entitled to 24 hours rest (one day) in fortnight. Now, a chowkidar is getting overtime allowance for 100 hours per month in accordance with circular dated 09.05.2011. Details of overtime allowance granted to the claimant from June'88 to March 2013 are annexed as Annexure C with the response. In view of these facts, claimant is not entitled to any relief, claims the corporation.

7. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, assisted by Ms. Jaishri, School Inspector, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

8. At the outset, it has been argued that the dispute has not acquired status of an industrial dispute since it has not been validly espoused by the union. For an answer, definition of the term industrial dispute is to be construed. For sake of convenience, definition of the term "industrial dispute", as defined by section 2(k) of the Industrial Disputes Act, 1947 (in short the Act).

> "(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

9. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and

employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

10. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the Corporation does not dispute that the claimant is workman within the meaning of clause(s) of section 2 of the Act.

11. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

12. In Kyas Construction Company (Pvt.) Ltd. (1958 (2) LLJ 660) the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute "is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist (1961 (II) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen, in order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan (1957(1) LLJ 27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In

Dharampal Prem Chand (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited (1970 (1) LLJ 132). However in Western India Match Compny (1970 (II) LLJ 256), the Apex Court referred the precedent in Drona Kuchi Tea Estate's case (1958 (1) LLJ 500) and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non ernployment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran (1970 (1) LLJ 558).

15. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works (1970 (1) LLJ 507) complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited (1974 (II) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. (1970 (II) LLJ 256).

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

18. Next count of attack made by the Corporation that the dispute was raised by the claimant after 13 years, which frustrates the relief in his favour. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be

generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. in Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

19. Claimant raised the dispute in respect of overtime allowance paid to him with effect from 01.01.1997. Thus, it is emerging over the record that the claimant had raised the dispute after a long gap of 13 years. No explanation is offered for this inordinate delay. It appears that there was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

20. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a *bonafide* labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

21. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd.(1970 Lab. I.C. 421), High Court of Delhi went a step ahead and held that "... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

22. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal [1978(1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before

the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

23. In New Delhi Tailor Mazdoor Union [1979 (39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

24. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists (supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means. and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984 (2) LLJ 259].

25. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

26. Since the claimant had not come forward to project that demand notice was served on the corporation, under these circumstances, stand taken by the Corporation is to be believed. Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

27. Turning to facts presented by the Corporation, it emerges that the Corporation takes 10 hours duty from Chowkidars. Keeping in view the nature of duties performed, the Corporation was paying intermittent allowance to Chowkidars for performing more than 10 hours duty. Allowance was paid @ Rs.130.00 per month for performance of duty upto 12 hours, Rs. 180.00 per month for duties performed for more than 12 hours but upto 16 hours and Rs. 190.00 per month for performing duties more than 16 hours a day. Workers union agitated the issue and demanded overtime allowance in lieu of intermittent allowance. On the basis of the resolution, the Corporation, *vide* its decision dated 15.03.1997 decided to pay overtime allowance to the maximum limit of 50 hours. The said allowance was paid @ Rs. 625.00 per month. Workers union further demanded enhancement of maxima limit of overtime allowance and in consideration of the said demand, the Corporation started paying overtime allowance with a cap of 100 hours a month. Now, the Corporation is paying overtime allowance to Chowkidars at Rs.1250.00 in pursuance of Office Order dated 09.05.2011.

28. Annexure C, when scanned, highlights that from January 98 till March 2011, overtime allowance was paid to the claimant @ Rs. 625.00 per month. From April 2011 till March 2013, overtime allowance has been paid to the claimant @ 1250.00 per month. Therefore, it is emerging over the record that overtime allowance is being paid to the claimant in accordance with the circulars, issued by the Corporation from time to time.

29. In view of the above reasons, it is evident that the action of the Corporation in paying overtime allowance to the claimant @ Rs. 625.00 per month till March 2011 and thereafter Rs. 1250.00 till date is in accordance with the circulars issued from time to time. Claimant is not entitled to overtime allowance more than the amount referred above. Resultantly, action of the Corporation is found to be justified. No relief is available to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Date: 20.12.2013

नई दिल्ली, 30 दिसंबर, 2013

का॰आ॰ 208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ़ दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय , दिल्ली के पंचाट (संदर्भ संख्या 192/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-42012/142/2012-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, 30th December, 2013

S.O. 208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.192/2012) of the Central Government Industrial Tribunal/Labour Court 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi, Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F. No. L-42012/142/2012-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.1, DELHI

I.D. No. 192/2012

Sh.Bijender S/o Sh. Jai Kishan
C/o Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624,
Sultanpuri, Delhi. .....Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110002. ....Management

AWARD

Claimant was engaged as safai karamchari on daily wage basis by Municipal Corporation of Delhi (in short the Corporation) in December 1994. Thereafter, he was engaged at intervals as and when regular safai karamcharis happened to be on leave or absent. However, he never rendered continuous service of 240 days in any calendar year. In the year 2005, the claimant was involved in a case of dowry death and arrested by the police. He remained in judicial custody for considerable long period. He was prosecuted for the said offence. However, he was discharged by the court on 05.05.2007. After his discharge from the case, he again approached the Corporation for his re-engagement. He was re-engaged as substitute safai karamchari with effect from 01.10.2007. With the passage of time, he was taken as a regular employee. On regularization of his services, he raised a demand for counting his service, rendered as substitute safai karamchari since 01.12.1994, which demand was not concede to. He raised a dispute before the Conciliation Officer in that regard. Since his calm was contested, conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this tribunal for adjudication, vide order No. L-42012/142/2012/IR(DU), New Delhi dated 07.12.2012, with following terms:

> "Whether action of the management of Municipal Corporation of Delhi (MCD) in denying seniority to Shri Bijender, S/o Shri Jai Kishan, safai karamchari with all consequential benefits on the basis of seniority of 1994 (as the workman was appointed on 01.12.1994) is justified or not? If not, to what relief the workman is entitled to and from which date."

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Bijender opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Bijender by registered post on 28.12.2012, calling upon him to file claim statement before the Tribunal on or before 17.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 22.01.2013 calling upon his to file claim statement before the Tribunal on 11.02.2013. Notice was again transmitted to the claimant by registered post on 12.02.2013 and 12.03.2013 asking him to file his claim statement on or before 08.03.2013 and 09.04.2013 respectively. Lastly, notice dated 10.04.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 24.05.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of

these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that the claim is not maintainable, since it has not been espoused by a union or considerable number of workmen in its establishment. Corporation projects that the claimant was initially engaged as substitute safai karamchari on daily wage basis on 01.12.1994. He was taken on duty as and when some regular safai karamchari remained on leave or absent. He never worked for 240 days in any calendar year. In the year 2005, an FIR was registered against him. He was arrested by the police and remained in judicial custody from 29.08.2005 to 01.12.2005. After his discharge from the case in the year 2007, he approached the Corporation for his re-engagement. He worked only for 7 days in August 2005. He had not reported for duty thereafter till his discharge from the case. He approached the Corporation on 16.05.2007 with a request to re-engage him. He was engaged as fresh substitute safai karamchari vide order No.631/SS/WZ/2007 dated 01.10.2007. Since he remained absent for a period of more than two years, without any intimation, he cannot claim seniority for the services rendered by him since 1994 till the year 2007. Substitute karamchari is first converted as daily wager safai karamchari and thereafter considered for regularization as per policy of the Corporation. Since he was not a daily wager safai karamchari in the year 1994 till 2007, he cannot claim seniority in that regard. He is not entitled to any relief and reference may be answered in favour of the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. The Corporation argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial Dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

8. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

9. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

10. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment,, terms of employment, or conditions of labour the workmen

as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

11. In Kyas Construction Company (Pvt) Ltd. [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

12. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

13. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of

the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

14. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

15. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256]:

16. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

17. As projected by the Corporation, claimant was engaged as safai karamchari on daily wage basis on 01.12.1994. His services were availed as and when regular safai karamchari happened to be on leave or absent. He never completed 240 days continuous service in any calendar year. He was arrested by the police, when a case of dowry death was registered against the claimant. He remained in judicial custody from 29.05.2005 to 01.12.2005. After his release on bail, he opted not to approach the Corporation for his re-engagement. He waited till outcome of the case and on his discharge by the court of Additional Sessions Judge, Rohini, on 05.05.2007, he approached the Corporation for his re- engagement on 06.05.2007. These facts are brought over the record through an application moved by the claimant for his re-engagement as substitute safai karamchari. This it is evident that till 06.05.2007, claimant had not rendered continuous service of one year with the Corporation in any of the calendar years.

18. He was engaged as substitute safai karamchari by the Corporation. He was subsequently taken on roll as safai karamchari on muster roll. His services were regularized, as per policy of the Corporation thereafter. Thus, it is evident that the claimant was engaged by the Corporation as substitute safai karamchari and he cannot claim seniority for that period. Action of the Corporation in denying seniority to Shri Bijender for services rendered by him as substitute safai karamchari is in consonance with policy of the Corporation. No illegality or unjustifiability is noted in that action. Claimant is not entitled to any relief on factual proposition too.

19. From the foregoing reasons, it is crystal clear that Shri Bijender is not entitled to claim seniority with effect from 01.12.1994 when he was engaged as safai karamchari by the Corporation. Action of the Corporation in denying seniority to him in respect of services rendered by him as substitute safai karamchari is found to be legal and justified. No relief can be granted in favour of the claimant. An award is accordingly passed. It be sent to the appropriate Government for publication.

Date: 29.11.2013

Dr. R.K.YADAV, Presiding Officer

आदेश

नई दिल्ली, 30 दिसम्बर, 2013

का॰आ॰ 209.—जबकि केन्द्रीय सरकार का यह मत है कि भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोक्ताओं और इस आदेश के साथ संलग्न अनुसूची के संबंध में उनके कर्मकारों के बीच एक औद्योगिक विवाद है।

और जबकि केन्द्रीय सरकार का यह मत है कि उपर्युक्त विवाद में राष्ट्रीय महत्व का प्रश्न अंतर्वलित है और इसका राष्ट्रीय औद्योगिक अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए।

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद का औद्योगिक अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुंबई में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-12011/15/94-आईआर (बी-I) दिनांक 21.01.2011 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया।

और जबकि न्यायमूर्ति श्री गौरी शंकर सर्राफ सेवा निवृत्त हो गए हैं।

अतः, अब, न्यायमूर्ति श्री सत्य पूत महरोत्रा के इसके पीठासीन अधिकारी से युक्त मुंबई में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उक्त अधिनियम की धारा 10 की उपधारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट कर दिया कि न्यायमूर्ति श्री सत्य पूत महरोत्रा इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर इसे न्यायमूर्ति श्री गौरी शंकर सर्राफ द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे।

[फा. सं. एल-12011/15/94-आईआर(बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

ORDER

New Delhi, the 30th December, 2013

S.O. 209.—Whereas the Central Govt. is of the opinion that an industrial dispute exists between the employers in relation to the management of State Bank of India and their workmen in respect to the schedule hereto annexed;

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government is of the opinion that the said dispute should be adjudicated by the National Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L- 12011/15/94- IR(B-I) dated 21.01.2011 with headquarters at Mumbai and appointed Justice Shri Gauri Shankar Sarraf as its Presiding Officer and in exercise, of the powers conferred by Sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication.

And whereas Justice Shri Gauri Shankar Sarraf has retired.

Now therefore, a National Industrial Tribunal is constituted with Headquarters at Mumbai with Justice Shri Satya Poot Mehrotra as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shankar Sarraf and dispose of the same accordingly.

[F. No. L- 12011/15/94-IR(B-I)]
SUMATI SAKLANI, Section Officer

आदेश

नई दिल्ली, 30 दिसम्बर, 2013

का॰आ॰ 210.—जबकि केन्द्रीय सरकार का यह मत है कि रेल मंत्रालय, रेलवे बोर्ड के प्रबंधन के संबंध में नियोक्ताओं और इस आदेश के साथ संलग्न अनुसूची के संबंध में उनके कर्मकारों के बीच एक औद्योगिक विवाद है।

और जबकि केन्द्रीय सरकार का यह मत है कि उपर्युक्त विवाद में राष्ट्रीय महत्व का प्रश्न अंतर्वलित है और इसका राष्ट्रीय औद्योगिक अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए।

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद का औद्योगिक अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुंबई में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-41011/128/2010-आईआर (बी-I) दिनांक 27.01.2012 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख

द्वारा प्रदत्त का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया।

और जबकि न्यायमूर्ति श्री गौरी शंकर सर्राफ सेवा निवृत्त हो गए हैं।

अतः, अब, न्यायमूर्ति श्री सत्य पूत महरोत्रा के इसके पीठासीन अधिकारी से युक्त मुंबई में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उक्त अधिनियम की धारा 10 की उपधारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट कर दिया कि न्यायमूर्ति श्री सत्य पूत महरोत्रा इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर इसे न्यायमूर्ति श्री गौरी शंकर सर्राफ द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे।

[फा. सं. एल-41011/128/2010-आईआर(बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

ORDER

New Delhi, the 30th December, 2013

S.O. 210.—Whereas the Central Govt. is of the opinion that an industrial dispute exists between the employers in relation to the management of Ministry of Railways, Railway Board and their workmen in respect to the schedule hereto annexed;

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government is of the opinion that the said dispute should be adjudicated by the National Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L- 41011/128/2010- IR(B-I) dated 27.01.2012 with headquarters at Mumbai and appointed Justice Shri Gauri Shankar Sarraf as its Presiding Officer and in exercise, of the powers conferred by Sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication.

And whereas Justice Shri Gauri Shankar Sarraf has retired.

Now therefore, a National Industrial Tribunal is constituted with Headquarters at Mumbai with Justice Shri Satya Poot Mehrotra as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shankar Sarraf and dispose of the same accordingly.

[F. No. L- 41011/128/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (101/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.12.2013 को प्राप्त हुआ था।

[फा. सं. एल-12012/594/89-डी.II,-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 101/93) of the Cent.Govt.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 31/12/2013.

[F. No. L-12012/594/89-D-IIA-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT NDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/93

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Pokhanlal Ray,
S/o Shri Hemraj Ray,
R/o Pindarai, PO Adhegaon,
Tehsil Lakhnadon,
Distt. Seoni (MP) ...Workman

Versus

Regional Manager,
Central Bank of India,
Chhindwara (MP)

...Management

AWARD

(Passed on this 28th day of November 2013)

1. As per letter dated 13-5-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D.Act, 1947 as per Notification No.L-12012/594/89-D-IIA. The dispute under reference relates to:

"Whether the claim of Shri Pokhanlal Ray that he had worked with the Central Bank of India as peon continuously from the year 1982 till August 1988 and that termination of his services by the management of Central Bank of India was unjustified is correct? If so, what relief Shri Pokhanlal Ray is entitled to?"

2. After receiving reference, notices were issued to the parties. Union filed Statement of claim representing workman Pokhanlal Roy at Page 5/1 to 5/5. The case of 1st party Union is that Union is registered under Trade Union Act 1926 having Registration No 3487 that the applicant Pokhanlal is member of the Union. He was orally appointed as peon from 4-6-81 by IInd party. Pokhanlal was posted at Laknadon Branch Distt. Seoni. He was continuously working to the satisfaction of his superiors. Artificial breaks were given to him for 1-2 days. It is also pleaded that though Pokhanlal was working, his salary was paid in name of Girdhari Lal, Jeevan, his brothers. That he was continuously working till 5-1-88 till termination of his services. That his services were terminated without issuing notice, retrenchment compensation was not paid, junior employees were continued as such the services of Shri Pokhanlal are terminated in violation of Section 25-F, G & H of I.D. Act, it is also submitted that termination of his services amount to illegal retrenchment. On such grounds, Union is praying for reinstatement with back wages to Shri Pokhanlal.

3. IInd party filed Written Statement at Page 7/1 to 7/3. The objection is raised that reference is not tenable. This Tribunal has no jurisdiction to adjudicate the reference. Though the Union is registered, 1st party employee is not its members. That Pokhanlal was not appointed against vacant post as peon. Branch Manager has no power to make such appointment. The rules and regulations of the Banks provide appointment. Such procedure was not followed for appointment of 1st party employee. IInd party denies that workman was continuously working but his salary was paid in name of his brothers Mansingh, Jeevan lal and Girdhari. IInd party further submits that Pokhanlal was engaged on casual basis as per exigencies. Shri Pokhanlal was not appointed on vacant post. There was no question of his termination. He had not completed 240 days continuous service. On such ground, IInd party prays for rejection of the claim. IInd party further contents that workman was not fulfilling qualifications for appointment as peon. The procedure for selection was not followed therefore 1st party workman is not entitled for reinstatement.

4. 1st party filed rejoinder at Page 9/1 to 9/2 reiterating its contentions that he had completed 240 days continuous service during each of the year 1991 to 1998. His services are terminated in violation of Section 25-F, G & H of I.D.Act.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the claim of Shri Pokhanlal Ray that he had worked with the Central Bank of India as peon continuously from the year 1982 till August 1988?	It is proved that workman was working in Central bank of India from 1982 to 1988
(ii)	Whether termination of his services by the management of Central Bank of India was unjustified	Termination of service of Pokhanlal is in violation of Section 25-F of I.D. Act.
(iii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. **Issue No.1 & 2**— Point No.1,2 are interconnected and common evidence is adduced by both the parties. Therefore it is convenient to decide point No.1, 2 collectively. Pokhianlal workman is challenging termination of his services for violation of Section 25-F, G of I.D. Act. He claims that he was continuously working in the bank from 4-6-81 to 1-1-88. His services were terminated without notice, retrenchment compensation was not paid to him. Management of IInd party denied above contentions. Workman filed affidavit of his evidence covering most of his contentions in Statement of Claim filed on his behalf. In his affidavit of evidence, he has stated that he was continuously working in the Bank from 4-6-81 to 1-1-87. His services were terminated illegal. He had completed 240 days continuous service. That peon book for above period is clearly demonstrating his working in the Bank. In his cross-examination, workman says appointment letter was not given to him. Post was not advertised. His name was not sponsored through Employment Exchange. His services were not terminated by order in writing. He was not given certificate about his working in the Bank or he completed 240 days working in the bank. That he was appointed for specific work. He was paid wages for days he worked. Workman has produced Saving Bank Account Passbook at Exhibit W-1 and W-1(a). Management's witness P.S.Thakur stated in his affidavit that workman was engaged for casual work for some days he was paid wages. The wok was of casual nature for 2-4 hours . The work was not full time or of permanent nature . That pass book filed by workman is for Saving Account has no nexus with the employment. In his cross-examination, management's witness says when workman was employed he was not posted at the branch. He has no personal information about workman as to when he was employed.

He was unable to tell for how many days the workman was working. That casual labour or daily wage labour if he has account in the Bank, wages are deposited in such Account. That passbook produced by workman W-1, W-1(a) are old. He claims ignorance about certificate issued by Branch Manager in 1988. He also claims ignorance with respect to Shri Pokhanlal, workman.

7. Workman has filed affidavits of witnesses Jeevanlal, S/o Hemraj, Girdhari, S/o Leeladhar. Both witnesses have stated that workman was working in the bank from 1982 to 1988. Their evidence in above point is not challenged in their cross-examination. Witness of the management has no personal knowledge about working of the Bank. On the other hand, evidence of workman is corroborated by both of his witnesses therefore I donot find reason to disbelieve their evidence. The evidence on record is sufficient to hold the workman was continuously working from 4-6-81 to 1-1-88. Services of 1st party workman are terminated without notice, retrenchment compensation is not ipaid to him. As such termination of his services is in violation of Section 25-F of I.D.Act. for above reasons, I record my finding on Point No.1 that workman was working in the bank from 4-6-81 to 1-1- 88. & Point No.2 in Negative.

8. Point No.3- In view of my finding in Point No.1, 2 that the termination of services of workman is in violation of Section 25-F of I.D. Act, question arises as to what relief the workman is entitled? The evidence on record shows workman was not appointed following procedure. However he was continuously working. His services were terminated from 1-1-88 i.e. about 25 years back. As appointment of workman was not made after selection process, reinstatement of workman would not be justified.

9. Learned counsel for 1st party submitted certain citations.

> "In case of Devendra Singh versus Municipal Corporation , the question of workman under Section 2(s) was involved for decision. In present case there is no controversy about 1st party workman is covered under Section 2(s) of I.D. Act."
>
> 1st party workman was working as peon and not in managerial or supervisory category therefore the ratio cannot be applied to case at hand.
>
> "In case of Officer Incharge Defence Standardization Cell versus Mukesh Kumar reported in 2013-LAB-I.C. 3329. Their Lordship of Delhi High Court held successive appointment given to him to defeat his right to permanency. His appointment was not contractual employment as stop gap arrangement till filling of vacant post through regular process to attract Section 2(oo)(bb) of Act. Work done by him was of perennial nature. Termination of his services is in violation of Section 25-F of I.D.Act."

In present case also, the services of the workman are terminated in violation of Section 25-F of I.D. Act.

10. Considering the 1st party workman was working in the Bank for about 5 years, compensation Rs. 1 Lakh would be appropriate to meet the ends of justice. Accordingly I record my finding on Point No. 3.

11. In the result, award is passed as under:-

(1) The action of termination of services of workman by llnd party is illegal for violation of Section 25-F of I.D. Act.

(2) IInd party is directed to pay compensation Rs.1 Lakh to the 1st party workman Shri Pokhanlal.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 212.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (48/2001) प्रकाशित करती है जो केन्द्रीय सरकार को 31.12.2013 को प्राप्त हुआ था।

[फा. सं. एल-12012/162/2000-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 48/2001 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 31/12/2013.

[F.No. L-12012/162/2000-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/48/2001
PRESIDING OFFICER: SHRI R.B. PATLE

Shri Rohit Rao Bhalekar,
S/o Late Devram Bhalekar,
New Colony,
Vill and PO Kodariya, Mhow,
Distt. Indore (MP) ...Workman

Versus

General Manager,
Syndicate bank,
Head Office, P.B. No. 1,
Manipal (Karnataka) ...Management

AWARD

(Passed on this 13th day of November 2013)

1. As per letter dated 14/16-2-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/162/2000- IR(B-II). The dispute under reference relates to:

> "Whether the action of the management of Syndicate Bank of Mhow Branch in rejecting the application of Smt. Dev Bai for compassionate appointment to the son Shri Rohit Rao Bhalekar is justified or not? If not, what relief Mrs. Dev Bai w/o deceased employee Shri Dev Ram Bhalekar is entitled for?

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 8/1 to 8/6. The case of 1st Party workman is that Late Devram Bhalekar left his widow and son as his dependent. Shri Dev Ram Bhalekar was working in Mhow branch of the Bank as Security Guard from 1975 till his death on 18- 6-95. That the application for employment on compassionate ground was submitted by his widow, 1st party No.1 requesting to provide employment to her younger son . Application was submitted along with documents, caste certificate, school certificate alongwith details. The information requested by Branch Manager was also submitted by them. That IInd paprty had issued letter dated 27-11-96 asking to furnish further details with respect to the source of income. The amount received under Provident Fund, Gratuity, other property details and income of the family members. The information was submitted by 1st party No.1 vide letter dated 10-1-98.

3. 1st party workman submits that after death of Late Dev Ram Bhalekar, the financial condition has become worst. Employment on compassionate ground is not provided to her son. She is suffering hardship to survive. As per letter dated 21-1-98, 1st party workman was informed that the request for providing employment for compassionate ground to her younger son could not be considered favourably. Her request for supplying the copy of relevant documents was also not accepted. 1st party filed Writ Petition No. 1402/98 . the Writ petition was disposed on 15-3-99 with observation that 1st party may approach appropriate forum. 1st party submits that she is suffering from illness. The amount received by her was spent for her treatment. Her younger son is not in a position to provide proper treatment to her. That they are facing financial hardships. As per the scheme of the Bank, they pray for employment on compassionate ground for younger son 1st party No.2.

4. IInd party filed Written Statement at Page 11/1 to 11/10. Preliminary objection is raised that Late Dev Ram Bhalekar died on 18-6-95. The dispute is raised in 2001 is highly belated. It is not tenable. That claim of 1st party for appointment on compassionate ground is not covered as dispute under Section 2(k) of I.D.Act. the dispute is not tenable. On facts, it is submitted that Late Dev Ram Bhalekar was employed in Army. After his retirement from Army services, he was appointed in the Bank in May 1975. Dev Ram Bhalekar died on 18-6-95. Application for appointment on compassionate ground was submitted by his widow requesting to provide employment for her younger son Rohit Rao Bhalekar . It is further submitted that Writ Petition No. 1402/1998 was rejected on 15-3-98 observing to approach appropriate forum if available. That scheme of the Bank for appointment on compassionate ground provides for employment to widow, son, daughter, brother, sister with consideration of family pension, gratuity amount received, employee's /employer's contribution to Provident Fund, proceeds of LIC policies and investments of the employee, income of the family from other source, employment of other family members, size of family and liabilities etc. IInd party submits that widow received family pension of Rs. 1172/- from Defence Deptt. Family owns house worth Rs.80,000/- in 1997, there was no sudden crisis in the family due to death of Dev Ram Bhalekar. Out of 7 children, four daughters are already married and separated, two sons are employed and are not dependent on the claimant and only one son is dependent on her. Family is not in financial crisis. That LRs have receiving amount of Rs.1,55,330.63. the amount may yield a reasonable interest of Rs. 1553/- if invested in deposits. It is further contented that 1st party No.1 Smt. Dev Bai informed by letter that there was two deposits of Rs. 50,000 and Rs.20,000. In her application she had written that there was fixed deposit of Rs. 40,000/-. She receives monthly interest of Rs.300/- per month were not consistent. Therefore the claim for appointment on compassionate ground was rejected. It is submitted that claim of the 1st party deserves to be rejected.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Syndicate Bank of Mhow Branch in rejecting the application of Smt. Dev Bai for compassionate appointment to the son Shri Rohit Rao Bhalekar is justified ?	In Affirmative

(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Claim of 1st party for appointment on compassionate ground of her younger son Rohit Rao Bhalkar is referred for adjudication. Claim is denied by IInd party for the reasons given in detail in Written Statement. 1st party Devi Bai filed affidavit of her evidence stating in detail all the facts stated in her Statement of Claim That her younger son Rohit Bhalekar is qualified as a major for employment on compassionate ground. She had submitted application to the IInd party.

7. 1st party Dev Bai is claiming employment on compassionate ground for her son Rohit. However she has failed to adduce evidence. 1st party is proceeded exparte on 10-1-2011. Management has filed affidavit of evidence of witness Shri Aminesh Dhyani. The witness of the management has stated in detail the facts pleaded in the Written Statement that 1st party Dev Bai was receiving pension Rs. 1172/- from Defence Deptt. Family owns house worth Rs.80,000/- in 1997, there was no sudden crisis in the family due to death of Dev Ram Bhalekar. The details of scheme for employment on compassionate ground are stated in Para-8, 9 of his affidavit. The scheme provides employment on compassionate ground for son, daughter, brother, sister etc. the scheme also provides to determine financial condition of deceased employee, family pension, gratuity amount, PF received from Bank, income of the family from other sources, employment of other family members, size of family and liabilities, request of dependent for employment is to be considered provided that family is without reasonable means of livelihood. The evidence of workman remained unchallenged.

8. The documents produced Exhibit W-1 is copy of scheme providing employment on compassionate ground is consistent with the pleading of IInd party and evidence of management's witness. Exhibit W-3 is death certificate, W-4 is letter dated 7-9-96. The information was called from Shri Rohit Bhalekar Exhibit W-5 is letter given to Devi Bai calling the detailed information. The information is submitted by workman as per document Exhibit W-6. The declaration is Exhibit W-7. Exhibit W-12 is the copy of order passed in Writ Petition by Hon'ble High Court.

9. Learned counsel for 1st party Shri P.Choubey relies on ratio held in

> "Case of Govind Prakash Verma versus Life Insurance Corporation of India reported in 2005(10)SCC 289 . Their Lordship dealing with compassionate appointment held it was only irrelevant for the departmental authorities to take into consideration the amount which was being paid as family pension to the widow of the deceased and other amounts paid on account of terminal benefits under the rules- compassionate appointment cannot be refused on the ground that any member of the family received the amount admissible under the rules."

I have carefully gone through the judgment. I donot find there was specific scheme providing appointment on compassionate ground as in present case, the scheme for compassionate ground produced at Exhibit W-1 contemplates consideration of financial position of the family, income from other sources. The evidence in present case clearly shows that the deceased Dev Ram Bhalekar have four daughters, all are married, his two sons are serving in Military. They were posted in Jammu, Kashmir. The pleadings of 1st party are silent whether the scheme providing employment on compassionate ground suffers from any kind of illegality. The 1st party workman has not entered in witness box. The evidence of management witness remained unchallenged.

10. Learned counsel for IInd party Shri Shroti relies on ratio held in

> "Case of Bank of Maharashtra versus Manoj Kumar reported in 2010(3) MPLJ by full bench of High Court at Jabalpur. Their Lordship held having regard to the Exceptional nature of such appointment as it is granted under a special scheme carved out dehors the normal mode of recruitment, the same has to be governed as per the policies or provisions governing such appointment prevalent at a particular point of time when consideration is to be made and not on the basis of a policy which was in vogue and has been given up by the employer due to changed circumstances."

As per ratio held in above case, the appointment on compassionate ground is to be made as per prevalent policy. The pleading of 1st party are silent about the prevailing policy are not considered by the IInd party.

> Next reliance is placed in case of I.G.(Karmik) and others versus Prahlad Mani Tripathi reported in 2007(6) Supreme Court Cases 162. Their Lordship held compassionate appointment cannot be granted to the post for which the candidate is ineligible."

The ratio of above cited case has no bearing to the present case at hand. However the evidence on record shows that 1st party was receiving pension from Defence Department. Her financial condition was not poor. She was not in crisis after death of her husband. I donot find reason to disbelieve evidence of management's witness. Therefore I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:—

(1) Action of the management of Syndicate Bank of Mhow Branch in rejecting the application of

Smt. Dev Bai for compassionate appointment to the son Shri Rohit Rao Bhalekar is proper.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (21/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.12.2013 को प्राप्त हुआ था।

[फा॰ सं. एल-12012/5/98-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 21/99 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 31/12/2013.

[F.No. L-12012/5/98-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/21/99
PRESIDING OFFICER: SHRI R.B.PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwer Road,
Ujjain ...Workman/Union

Versus

Managing Director,
Bank of Baroda,
Head Office,
Mandwi (Gujarat) ...Management

AWARD

(Passed on this 24th day of October 2013)

1. As per letter dated 4-12-1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/5/98/IR(B-II). The dispute under reference relates to:

" Whether the action of the management of Bank of Baroda in terminating the services of Shri Suryakanth Bairagi and not regularizing him is justified? If not, to what relief the said workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through Dainik Vetan Bank Employees Union. The case of 1st party workman is that the workman was engaged as sweeper by IInd party from 1-2-91. He was working with devotion till termination of his service from 13-1-97. That he was working 6 days in a week, Sunday was holiday. His wages were paid under voucher obtaining his signatures. That his services were terminated without notice. He was not paid three months pay before termination of his service. He had completed 240 days continuous service during each of the year. He is covered workman under Section 2(s) of I.D.Act. He was not paid retrenchment compensation. Principles of 1st come last go was not followed. Termination of his services is in violation of Section 25-F , G, H of I.D.Act. That his services were terminated in violation of Section 33 of I.D.Act. on such ground, he prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 7/1 to 7/13. IInd party submits that the reference is illegal and disputed questions were not considered by appropriate Government while making reference. IInd party denied that workman was continuously working. As per IInd party 1st party workman was engaged as casual employee for cleaning works for two hours morning. That discontinuation of 1st party workman is covered under Section 2(oo)(bb) of I.D. Act. There was sufficient sub staff in the Bank. 1st party workman had worked for 139 days during the period 1991 to 1996. Workman is not covered under Section 25(b) of I.D. Act as he had not completed 240 days continuous service. Violation of Section 25-F, G, H & N of I.D. Act is denied. IInd party submits that the Employment Exchange guarantees the equality of opportunity for employment. Reservation policy of Government is strictly implemented for SC,ST, OBC, Handicapped, servicemen. The name of 1st party workman was not sponsored through Employment Exchange. The procedure for recruitment was not followed in this case. 1st party workman is trying to get employment by short cut method. He was not selected following the procedure. All other adverse contentions of the workman are denied. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Bank of Baroda in terminating the	In Affirmative

	services of Shri Suryakanth Bairagi and not regularizing him is legal?	
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

5. Though workman has filed statement of claim with respect to his grievance. That termination of his service is in violation of Section 25 G , H of I.D.Act. he has completed 240 days "continuous service during each of the year. The workman did not adduce evidence to substantiate his claim. As per ordersheet dated 7-5-2012 it was submitted by representative of workman that workman doesnot want to be examined therefore his evidence was closed. As per ordersheet dated 15-5-13, counsel for management submitted that management doesnot want to adduce evidence. Evidence of management was closed as such both parties did not adduce evidence in support of their contentions. Document Exhibit W-1 admitted by IInd party is letter issued by General Manager for use of Hindi language while sumitting the pleadings. Document Exhibit W-2 is infact an application submitted in this reference proceeding by the management directions be given to the applicant for depositing cost of translation of the Written Statement. It is not a document. As such there is no evidence on either side. The workman has failed to adduce evidence about his working in the Bank or his termination is in violation of Section 25-F of I.D.Act. therefore for above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:—

(1) The action of the management of Bank of Baroda in terminating the services of Shri Suryakanth Bairagi and not regularizing him is proper.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (6/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2013 को प्राप्त हुआ था।

[सं. एल-12011/118/2005-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31 December, 2013

S.O. 214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 6/06 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Punajb National Bank and their workmen, received by the Central Government on 31/12/2013.

[No. L-12011/118/2005 - IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/6/06

PRESIDING OFFICER: SHRI R.B.PATLE

General Secretary,
Punjab National Bank Employees Association,
74, Iqbal Nagar,
Ashoka Garden, Raisen Road,
Bhopal (MP) ...Workman/Union

Versus

Regional Manager,
Punjab National Bank,
Regional Office, Jawahar Bhawan,
Roshanpura Naka,
Bhopal (MP) ...Management

AWARD

Passed on this 23rd day of October 2013

1. As per letter dated 5-1-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/118/2005-IR(B-II). The dispute under reference relates to:

> "Whether the action of the Regional Manager, Punjab National Bank, Regional Office, Jawahar Bhawan, Roshanpura Naka, Bhopal (MP) in dismissing the services of Shri Mohan Bhondele, Ex-employee of Punjab National Bank Branch Tharet Dt. Datia w.e.f. 4-7-2000 is fair, legal and justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman failed to appear and file Statement of Claim, as such proceeded exparte against workman on 18-7-2013 and case was fixed for filing Written Statement by management. However perusal of record shows that despite of repeated notices issued to the management of IInd party, it failed to put appearance in the matter. As management has not appeared inspite of notice, matter deserves to be proceeded exparte. As such both the parties did not participate in the reference proceeding, they have failed to file Statement of Claim and Written Statement in

the matter, as such it is clear that parties are not interested in prosecuting the reference. Therefore no dispute Award is passed.

3. In the result, award is passed as under:—

" Reference is disposed off as both parties did not participate in reference proceeding despite service of notice."

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (140/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2013 को प्राप्त हुआ था।

[सं. एल-12011/80/2001-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 140/2001 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 31/12/2013.

[No. L-12011/80/2001 - IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/140/2001
PRESIDING OFFICER: SHRI R.B.PATLE

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9, Sanwer road,
Ujjain ...Workman/Union

Versus

Regional Manager,
UCO Bank, Regional Office,
11, Old Palasia,
A.B.Road, Indore ...Management

AWARD

Passed on this 27th day of November, 2013

1. As per letter dated 30-8-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/80/2001-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager, UCO Bank Indore in not regularizing the services of Shri Harinarayan Solanki is justified and legal? If not, what relief the workman is entitled for ?"

2. As per terms of reference, claim for regularization of service of 1st party workman Harinarayan Solanki is referred for adjudication. The statement of claim is filed by workman at Page 3/1 to 3/3 . Workman claims that he was working as peon in the Bank from 1989 till his services were terminated on 5-5-97. That he was continuously working. His services are terminated in violation of Section 25-F of I.D.Act.

3. IInd party filed Written Statement at Page 7/1 to 7/5. Material contentions of workman are denied. It is denied that workman was continuously working as peon. Completion of 240 days service is denied. Violation of Section 25-F of I.D.Act is also denied.

4. Workman filed rejoinder at Page 8/1 to 8/4 reiterating its contentions in Statement of Claim.

5. The affidavit of evidence is filed by workman. However he was not made available for cross-examination. Workman submitted application dated 13-7-2011 to withdraw his case. The application is supported by affidavit in view that workman is not desiring to prosecute his claim. He has stated that there is amicable settlement between workman and the management therefore he is not desiring to prosecute his claim. The dispute between parties seized to exist. Therefore the award is passed as under:-

" The dispute between parties is settled amicably therefore the reference stands disposed off"

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (17/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2013 को प्राप्त हुआ था।

[फा.सं. एल-12012/187/2004-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.17/05 of the

Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 31/ 12/2013.

[No. L-12012/187/2004 - IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/17/2005
PRESIDING OFFICER: SHRI R.B.PATLE

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9, Sanwer Road,
Ujjain. ...Workman

Versus

Regional Manager,
Bank of Maharashtra,
Regional Office, 688,
M.G.Road, Indore ...Management

AWARD

Passed on this 26th day of November, 2013

1. As per letter dated 2-2-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/ 187/2004-IR(B -II). The dispute under reference relates to:

> "Whether the claim of the workman that he was engaged as a sub-staff continuously during the period from 7-1-96 to 10-10-2001 by the management of Bank of Maharashtra is correct? Whether action of the management of Regional Manager, Bank of Maharashtra, Indore in not regularizing the services of Shri Ashok Kumar Soni is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was working with IInd party as peon on daily wages from January 1996. He was paid wages Rs.50/- per day. He was honestly working with IInd party. He was paid wages for six days in a week. The wages for holidays and Sundays were deducted. He was paid wages in name of different persons preparing bogus bills. However he was actually working in the Bank. That he had completed 240 days continuous service during every calendar year. His service were terminated without notice from 9-11-2002. He was not paid retrenchment compensation. That he was working under different Branch Managers. That he is covered as workman under Section 25- B of I.D.Act his services are terminated without notice, retrenchment compensation is not paid. Section 25-F of I.D.Act is violated. That principles of last come first go was not followed. Section 25-F, G,N of I.D.Act is violated by find party. That other employees are engaged after his termination. IInd party has violated Section 25-F of I.D. On these ground, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 5/5 to 5/5 . The claim of Ist party is totally denied. IInd party submits that the workman was engaged on daily wages from January 1996 on temporary basis during leave vacancy. He was engaged for cleaning work. Workman has not completed 240 days during any of the calendar year. It is reiterated that the workman had not completed 240 days continuous service. There is no point of violating section 25-F.G, H, N of I.D.Act by IInd party. Workman is not entitled to protection of Section 25-F of I.D.Act as he had not completed 240 days work during any of the calendar year. On such grounds, IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 6/1 to 6/2 reiterating his contentions in Statement of Claim that his services are terminated in violation of Section 25-F, G of I.D.Act. He has completed 240 days continuous service during each year.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the claim of the workman that he was engaged as a sub-staff continuously during the period from 7-1-96 to 10-10-2001 by the management of Bank of Maharashtra is justified?	In Negative
(ii)	Whether action of the management of Regional Manager, Bank of Maharashtra, Indore in not regularizing the services of Shri Ashok Kumar Soni is justified?	In Negative
(iii)	If so, to what relief the workman is entitled to?	Relief prayed by workman rejected.

REASONS

6. As per terms of reference, workman claims that he was continuously working in the Bank. He was not regularized by the Bank. However in his statement of claim, workman submits that his services were terminated without notice on 9-11-2002. He has challenged termination of his services alleging violation of Section 25-F, G, N of I.D.Act. The pleadings in Statement of Claim of workman are different from the terms of reference. Workman has filed

affidavit of his evidence. Workman has stated that he was working as permanent peon from 7-1-96. He was paid wages Rs.50/- per day. He was working under Branch Manager Rajoud. He had completed 240 days during each of the calendar year. In his cross- examination, workman admits that he was working temporarily. During relevant period, part time permanent sweeper was not working. The Branch was having sweeper on 1/3rd pay scale. In the year 2000, he enrolled his name in Employment Exchange. When he started working in the Bank, he was of 18 to 19 years of age. The evidence of workman does not show any selection procedure was followed by the Bank while he was engaged.

7. Workman has produced documents Exhibit W-1. Bonus was paid to the workman during 96 to 2002-03. However the working days are not shown in said document. The document Exhibit W-2 also doesnot show the working days of workman. In Exhibit W-3, the Branch Manager has informed that Shri Ashok Soni, s/o Basarti Lal Soni working as temporary PTS. In Exhibit W-4 IInd party has submitted reply before ALC. IInd party has stated in said reply that the workman was working from 1996 to 10-10-2001 as per exigencies. The working days are shown 219 in 2000, 172 in 2001, 193 in 2002. The document Exhibit W-5,6,7 shows working days. Workman has not completed 240 days. Those documents prepared are not maintained in the attendance register. Exhibit W-9 is reply submitted before ALC finds reference that workman did not work from 17-1-96. The details of the working on daily wages was enclosed. The evidence adduced by workman is not sufficient to establish that he was regularly working in the Bank as peon, rather the evidence shows that he was working temporarily. He was not appointed following selection process. No rule is brought to my notice by Shri R.Nagwanshi how the workman is entitled for regularization in service. For above reasons I record my finding in Point No.1,2 in Negative.

8. In the result, award is passed as under:—

(1) Workman was working on daily wages as per exigencies, as such workman is not entitled for regularization.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसंबर, 2013

का॰आ॰ 217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय,जबलपुर के पंचाट (156/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2013 को प्राप्त हुआ था।

[सं. एल-12012/117/2003-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 156/2003 of the Cent.Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 31/12/2013.

[No. L-12012/117/2003 - IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/156/2003
PRESIDING OFFICER: SHRI R.B.PATLE

Shri Krishna Kumar Tiwari,
S/o Shri Harishankar Tiwari,
Village & Post Saisei Saaji,
Tehsil Banda,
Sagar (MP) ...Workman

Versus

Branch Manager,
Central Bank of India,
Branch Behrol,Tehsil Banda,
Sagar (MP) ...Management

AWARD

Passed on this 28th day of October, 2013

1. As per letter dated 9-9-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12012/117/2003-IR(B -II). The dispute under reference relates to:

> "Whether the action of the management of Central Bank of India in terminating the services of Shri Krishna Kumar Tiwari, S/o Harishankar Tiwari from September 2002 is legal and fair? If not, to what relief he is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at Page 2/1 to 2/3. The case of 1st party workman is that he was appointed on daily wages on 22-12-98. He worked with devotion till his services were discontinued in September 2002. That he was performing various types of work. That he is doing maintenance of supplementary and General ledger of GLD deposit Register. He was also entrusted work to carry cash Regional Branch where he

had to sign the memo. That his services were discontinued without paying retrenchment compensation, no notice was issued to him. The termination of his services is in violation of Section 25-F of I.D.Act. He had completed 240 days continuous service. On such grounds, workman prayed for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 10/1 to 10/3. The case of IInd party is of total denial. IInd party denies that workman was appointed on daily wages from 22-12-98. It is denied that he was working with sincerity with devotion. It is denied that the workman was performing duties of maintenance of supply and General Ledger Gold Deposit register. It is denied that he was entrusted work of carrying cash to Regional Branch. There was no question of paying wages Rs. 30-40 per day. That as per guidelines of central office 8.33 % bonus is paid. All other contentions of workman that his services are terminated in violation of Section 25-F of I.D. Act is denied. That regularization in service is not a rule. The reference be answered in favour of the management.

4. Workman filed application for disposing the reference passing no dispute award. Affidavits are filed in support of the application. Workman has stated that he was working for 89 days in 1998-99, 103 days in 1999-2000, 90 days in 2000-01, 68 days in 2001-02. Thereafter he was discontinued from service. That the proceeding before this Tribunal is pending. That the post of sweeper is vacant in regional office of IInd party. He has submitted application for said post, therefore he doesnot intend to prosecute this reference. In next affidavit, it is stated by workman that he is selected for post of sweeper and therefore he doesnot deserve to prosecute the claim under reference. The dispute doesnot seems to exist in view of the facts stated above. Therefore award is passed as under:—

"Workman not pursuing his claim, therefore the dispute between parties stands disposed off."

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाईस चांसलर जनउ के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰ 1 के पंचाट संदर्भ संख्या 113/2013 को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[No. L-42025/03/2013-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.113/2013) of the Central Government Industrial Tribunal/Labour Court No.1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Vice Chancellor, JNU and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42025/03/2013-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 113/2013

Shri Manoj Kumar
S/o Shri Brij Bhushan
R/o 618/5/FA, Balram Gali,
Vishwas Nagar, Shadhara,
Delhi — 110 032. ...Workman

Versus

The Vice Chancellor,
Jawaharlal Nehru University
New Delhi-110067. ...Management

AWARD

School of Physical Sciences (in short the School), Jawaharlal Nehru University (in short the University) was established in 1986. Since then, there has been manifold increase in the activities of the School. Intake of students for M.Sc. and pre Ph.D/Ph.D. Programme has increased. In the recent past, the School had introduced two new courses in Chemistry and Mathematics. Despite manifold increase in the activity of the School, there is shortage of staff, particularly, store keepers, caretakers and lab. attendants. Posts of non-teaching (technical staff) for the School are being sanctioned by University Grants Commission (in short the Commission). When posts are sanctioned, the University is required to fill all these posts in a phased manner, as per recruitment rules, under intimation to the Commission. Thus, it results that the School had to avail services of persons for the post of store keepers, caretakers and lab. attendants through University's service provider, viz. M/s Good Housekeeping Regd. (hereinafter referred as the contractor).

2. Services of Shri Manoj Kumar were availed by the School initially as waterman through the contractor. Subsequently, his services were availed as lab. attendant with effect from 15.09.2008 through the contractor. His services were dispensed with on 04.01.2012. He raised a notice of demand on the University seeking reinstatement in service of the School with continuity and full back wages. His demand was not conceded to by the University. Constrained by these circumstances, he raised a dispute

before the Conciliation Officer. Since his claim was contested by the University, conciliation proceedings ended into a failure. Using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947(in short the Act), Shri Manoj Kumar files direct claim before this Tribunal, without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

3. In claim statement, Shri Manoj Kumar pleads that he joined services of the school on 01.07.2008 as waterrnan. Since his performance was found to be satisfactory, he was appointed as lab. attendant by the School on 15.09.2008. His appointment was made against sanctioned regular post, when Shri Narender Kumar was appointed as lab assistant by the School. He rendered continuous service till 04.01.2012. His services were dispensed with in an illegal manner, since he availed two days leave on account of his illness. Order of his dismissal was not preceded by one months' notice or pay in lieu thereof. The said order is violative of the provisions of section 25F of the Act.

4. Claimant presents that notice of demand was sent on 02.1.1.2012 the University opted not to respond to it. Constrained by these circumstances, he raised a dispute before the Conciliation Officer on 07.01.2013. The University filed its reply dated 20.02.2013, which was followed by rejoinder, filed by him. On 09.04.2013, conciliation proceedings ended into a failure on account of non-co-operative attitude of the University. He claims reinstatement in service of the School with continuity and full back wages.

5. Arguments were heard at the bar. Ms.Sulekha Sharma, authorized representative, advanced arguments on behalf of the claimant. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

6. Though in his claim statement, Shri Manoj Kumar pleads that he was engaged by the School as a waterman on 01.07.2008 and appointed as lab attendant on 15.09.2008 when Shri Narender Kumar was selected as lab assistant, yet he places reliance on reply dated 20.02.2013 sent by the University, office note dated 17.09.2008 recorded by the Administrative Officer, order dated 06.10.2008 and office order No. 371 of 2009 issued on 31.12.2009. When reply dated 20.02.2013 is scanned, it came to light that the University projects that Shri Manoj Kumar was working with the School on behalf of the contractor, who was service provider to the University. It was claimed that Shri Manoj Kumar was never employed by the University. He was not on muster roll of the University, hence there was no occasion to pay salary to him at any point of time. The University projects that the services of the claimant were dispensed with by the service provider. Office note dated 17.09.2008 reaffirms the above facts, wherein it has been mentioned that services of the claimant were taken as waterman with effect from 02.07.2008, to 14.07.2009 through the contractor. A proposal was made that his services may be availed as lab Attendant from 15.9.2008 through the contractor. Order dated 06.10.2008 highlights that services of the claimant were availed as lab attendant through the contractor. Office order No. 371 of 2009 dated 31.12.2009 brought to the light of the day that one post of senior technical assistant, one post of technical assistant and one post of lab attendant were allocated by the Vice Chancellor to the School, out of posts sanctioned by the Commission, vide its letter dated 13.08.2009. The said letter further clarifies that the above posts were to be filled in a phased manner as per actual requirement of the University, in consonance with the recruitment rules, under intimation to the Conmmnission.

7. It is evident that the facts pleaded in the claim statement are contradicted by the documents relied by the claimant. It emerges over the record that services of the claimant were availed by the School through the contractor. At this juncture, Ms.Sharma argued that though services of the claimant were availed through the contractor, yet he was working under control and supervision of the School. Gravamen of the case of the claimant is that he assails the contract agreement, entered into between the University and the contractor, in order to seek a declaration from this Tribunal to the effect that there existed relationship of employer and employee between the claimant and the University. Subsequent to this declaration, claimant wants adjudication that his services were dispensed with by the School in violation of provisions of the Act. Thus, out of his own case, it is crystal clear that the claimant admits himself to be an employee of the contractor and not of the University. Relationship of employer and employee never existed between the claimant and the University. There is complete vacuum of facts to the effect that the claimant was an employee of the School/University. Though the claimant tried to assert that he was working under supervision of the School, he failed to establish relationship of employer and employee between and the School/university.

8. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation & Abolition) /Act, 1970 (in short the contract Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relater to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as —

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole- time workmen.

Explanation — If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

9. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.1]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

> ".....they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition or contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

10. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who-shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

11. As announced by the Apex Court, on issuance of a prohibitive notification prohibiting employment of contract labour or otherwise in any industrial dispute

brought before it by the contract labour in regard to conditions of his service, the dustrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a uispute before the industrial adjudicator in regard to his conditions of service and in so case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

12. In Shivnandan Sharma [1955(1) LLJ 588], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court fel the first time laid down the crucial test of supervision and control for determining the retationship of employer and employee.

13. In Hussainbhui (supra) the petioner who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised onindustrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth though draped in different perfect paper arrangement, was that the real employer was petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to poduce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-beleive trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation infact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management adventitious connections cannot ripen into real employent."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

14. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contactor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

15. In view of the legal proposition, referred above, it is concluded that the claimant can maintain a dispute against

the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

16. Whether any directions for deeming the contract labour as having become the employee of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of noncompliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the the employees of the principal employer.

17. In the Steel Authority of India (supra) the Apex Court laid emphasis "...the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make It clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

18. Admittedly, employee of the contractor can maintain a dispute against the principal employer, when he assails the contract entered into between the principal employer and the contractor is a perfect paper arrangement. However, the proposition would be as to whether such a dispute can be raised by a 'contract employee under sub-section (2) of section 2A of the Act? For an answer to this proposition, it is expedient to consider definition of the phrase 'industrial dispute'. Section 2(k) of the Act defines industrial dispute, which definition is extracted thus:

> "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person;

19. The definition of "Industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (iv) it should relate to an "industry".

20. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self "evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or-plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act.

21. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for . adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workman as a class.

22. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

23. In Kyas Construction Company (Pvt.) Ltd. (1958 (2) LLJ 660) Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute "is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist (1961 (II) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

24. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan (1957(1) LLJ 27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited (1970 (1) LLJ 132). However in Western India Match Company (1970 (II) LLJ 256), the Apex Court referred the precedent in Drona Kuchi Tea Estate's case (1958 (1) LLJ 500) and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

25. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred

that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran (1970 (1) LLJ 558).

26. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works (1970 (1) LLJ 507) complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

27. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited (1974 (II) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they Stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. (1970 (II) LLJ 256).

28. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

29. Classification between workmen unaided by union or considerable number of workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the statute book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, the Legislature provided remedy to the workmen who is unaided by a union or considerable number of workmen. Section 2A of the Act does not destroy the concept of individual dispute and collective dispute and such concept still remains as a major class and in ail other provisions of the Act. Consequently, it is evident that excepting the dispute relating to discharge, dismissal, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to acquire a status of an industrial dispute. As pointed out above, the claimants assail that the contract between the contractor and the University is sham and nominal. The dispute, which the claimants have attempted to raise under sub-section (2) of section 2A of the Act, needs espousal to acquire status of an industrial dispute. The dispute has not been espoused either by an union or considerable number of workmen. Thus, the dispute, when he claimants

question genuineness of the contract, has not acquired status of an dustrial dispute.

30. As pointed out above, dispute raised by the claimant is that his services have been terminated in an illegal manner. This dispute can be raised by him under sub section (2) of section 2A of the Act. However claim that the contract entered into between the University and the contractor was sham and bogus does not fall within the ambit of section 2A of the Act. For such a dispute, espousal by the union or considerable number of workmen in the establishment of the University is required. Thereafter, the appropriate Government is supposed to form an opinion about existence of the dispute and to refer it for adjudication under sub-section (1) of section 10 of the Act. Claimant cannot raise such a dispute of his own, without it being referred for adjudication by the appropriate Government. Therefore, it does not lie in the mouth of the claimant to assert that the contract entered into between the University and the contractor is sham and bogus.

31. In view of the facts detailed above, it is evident that the claimant is not entitled to any relief. His claim statement is to be discarded. Consequently, claim statement put forth by the claimant is brushed aside. No relief can be granted to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 12.08.2013

Dr. R.K. YADAV, Presiding Officer.

नई दिल्ली, 31 दिसम्बर, 2013

का॰आ॰ 219.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (141/95) प्रकाशित करती है जो केन्द्रीय सरकार को 31.12.2013 को प्राप्त हुआ था।

[सं॰ एल-12012/71/95-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 219.—In pursuance of Section 17 of the Industrial DisputesAct, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.141/95 of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 31/12/2013.

[No. L-12012/71/95 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R141/95

PRESIDING OFFICER: SHRI R.B.PATLE

Smt. Guntha Bai,
Behind Laxmi Press,
Girija Kund Ward,
Seoni. Workman

Versus

Regional Manager,
Punjab National Bank,
124, Napier Town,
Jabalpur Management

AWARD

Passed on this 7th day of November 2013

1. As per letter dated 25-7-1995 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No L-12012/71/95-IR(B-2). The dispute under reference relates to:

> " Whether the action of the management of Punjab National Bank, Jabalpur/Seoni in stopping Smt. Guntha Bai, sweepers from duty w.e.f. 5-8-93 is legal and justified? If not, what relief is the said workman entitled to".

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at Page 3/1 to 3/2. Case of 1st party workman is that she was employed by the Bank. Her services are governed by Sastry Award, Desai Award and Bipartite Settlement Sastry Award provides appointment as temporary employees on probation , permanent member specifying the kind of appointment and the pay and allowances to be paid. That workman was employed as part time sweeper in Seoni Branch of the Punjab National Bank on 7-8-92. She continued to work without break till 4-8-93. She had completed more than 240 days service. She is covered as workman under Section 25(B) of I.D.Act. Her services were abruptly discontinued without reasons. Procedure prescribed for termination of employment in Bipartite Settlement of Sastry Award were not followed. On such ground, workman prays for reinstatement with full back wages.

3. Management filed Written Statement at Page 5/1 to 5/5 opposing claim of the workman. It is submitted that

the claim of workman is misconceived. She is claiming reinstatement with back wages on ground of illegal termination of her service. That she was never appointed by management of Punjab National Bank as regular employee. Her appointment was made as per the norms without following procedure of recruitment. That she was engaged by Bank for casual work of sweeping in the premises. 1st party workman is to come to Bank for cleaning, sweeping premises for about an hour. The amounts were paid through vouchers. She was not a regular employee of the Bank. She is not entitled for reinstatement. The violation of Sastry Award, Bipartite Settlement are denied. IInd party further denied that workman completed 240 days continuous service within meaning of Section 25(B) of I.D.Act. Workman was part time employee. That discontinuation of her services is covered by Section 2(oo)(bb) of I.D.Act. It doesnot amount to retrenchment. Workman has not completed 240 days service preceding her discontinuation. Therefore she is not workman under I.D.Act. any settlement is not violated as alleged. On such ground, IInd party prays for rejection of claim of workman.

4. Workman filed rejoinder at Page 6/1 to 6/2 reiterating her contentions in Statement of Claim. That she was continuously working from 7-8-92 to 4-8-93. That her termination is in violation of Sastry Award, provisions of I.D.Act.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Punjab National Bank, Jabalpur/Seoni in stopping Smt. Guntha Bai, sweepers from duty w.e.f. 5-8-93 is legal ?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Workman is challenging termination of her services in violation of provisions of I.D.Act, Sastry Award, Desai Award. That she completed 240 days service prescribed under I.D.Act. Her services were discontinued without reasons. Management denied above contentions of workman. It is submitted that workman was engaged as casual employee. She has completed 240 days. Violation of Sastry Award, Desai Award is denied. Workman did not participate in the reference proceeding. After filing rejoinder, she is proceeded exparte on 7-3-08. Management also did not adduce any evidence though the case was repeatedly adjourned. Thus it is clear that both parties did not participate in the reference proceedings. The contentions of workman that she completed 240 days continuous service during 12 months preceding her termination is not supported by any evidence. Therefore violation of Section 25-F of I.D.Act cannot be established. For above reasons, I record my finding in on Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) Action of the management of Punjab National Bank, Jabalpur/Seoni in stopping Smt. Guntha Bai, sweepers from duty w.e.f. 5-8-93 is proper.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 1 जनवरी, 2014

का॰आ॰ 220.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतदद्वारा नुमलीगढ़ रिफाइनरी लि॰ गुवाहाटी, असम के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 01.01.2014 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:—

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

(2) इस छूट के होते हुए भी कर्मचारी, उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किये जाएंगे;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं॰ एस-38014/18/2013-एस॰एस॰-I]

सुभाष कुमार, अवर सचिव

New Delhi, the 1st January, 2014

S.O. 220.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/ establishments of Numaligarh Refinery Ltd., Guwahati, Assam from the operation of the said Act. The exemption shall be effective w.e.f. 01.01.2014 for a period of one year.

2. The above exemption is subject to the following conditions namely:-

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;

(2) Not withstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub- section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/18/2013-SS-I]
SUBHASH KUMAR, Under Secy.

नई दिल्ली, 1 जनवरी, 2014

का॰आ॰ 221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58/2012, 62, 63, 64, 65, 66, 67, 68, 69, 70/2013, 18, 19, 20/2013) चेयरमैन एंड मैनेजिंग डायरेक्टर हिंदुस्तान फ़ोटो फिल्म्स मैन्युफैक्चरिंग कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58/2012, 62, 63, 64, 65, 66, 67, 68, 69, 70/2013, 18, 19, 20/2013 को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं. एल-42012/95 से 108/2012-आईआर (डीयू),
सं. एल-42012/114-119/2012-आईआर (डीयू),
सं. एल-42012/121/2012-आईआर (डीयू),
सं. एल-42012/120/2012-आईआर (डीयू),
सं. एल-42012/122/2012-आईआर (डीयू),
सं. एल-42012/172 से 174/2012-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 1st January, 2014

S.O. 221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58/2012, 62, 63, 64, 65, 66, 67, 68, 69, 70/2013, 18, 19, 20/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The CMD, Hindustan Photo Films Mfg. Co. Ltd., Udhagamandalam and their workman, which was received by the Central Government on 31/12/2013.

[No. L-42012/95 to 108/2012-IR(DU),
No. L42012/114-119/2012-IR(DU),
No. L-42012/121/2012-IR(DU),
No. L-42012/120/2012-IR(DU),
No. L-42012/122/2012-IR(DU),
No. L-42012/172 to 174/2012-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 25th November, 2013

Present : K.P. PRASANNA KUMARI, Presiding Officer

I.D. Nos. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of 2012, 62, 63, 64, 65, 66, 67, 68, 69 and 70 of 2013 and ID 18, 19 and 20 of 2013

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Hindustan Photo Films Mfg. Co. Ltd. and their Workman]

BETWEEN

Sri N. Krishnamoorthy & 25 Others — 1st Party/Petitioner

AND

The Chairman-cum-Managing Director
Hindustan Photo Films
Mfg. Co. Ltd., Indus Nagar (PO),
Udhagamandalam-643005 — 2nd Party/Respondent

S. No.	I.D. No.	Reference No. & Date	Name of the I Party	Name of the II Party	Appearance for Workman	Appearance for Respondent
1	2	3	4	5	6	7
1.	45/2012	L-42012/95/2012-IR(DU) dated 24.08.2012	Sri N. Krishna-moorthy	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
2.	46/2012	L-42012/96/2012-IR(DU) dated 24.08.2012	Sri S. Delila Doris	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
3.	47/2012	L-42012/97/2012-IR(DU) dated 24.08.2012	Sri R. Jayaram Sekar	Hindustan Photo Films Mfg. Co. Ltd.	Sri. G. Gunaseelan	M/s Aiyar & Dolia, Advocates
4.	48/2012	L-42012/98/2012-IR(DU) dated 24.08.2012	Smt. L. Indrani	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
5.	49/2012	L-42012/99/2012-IR(DU) dated 24.08.2012	Sri V. Mohan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
6.	50/2012	L-42012/100/2012-(DU) dated 24.08.2012	Sri K. Sundarraj	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunasselan	M/s Aiyar & Dolia, Advocates
7.	51/2012	L-42012/101/2012-IR(DU) dated 24.08.2012	Sri B. Balakrishnan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
8.	52/2012	L-42012/102/2012-IR(DU) dated 24.08.2012	Sri A. Mani	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
9.	53/2012	L-42012/103/2012-IR(DU) dated 24.08.2012	Sri R. Papannan	Hindustan Photo films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
10.	54/2012	L-42012/104/2012-IR(DU) dated 24.08.2012	Sri P. Singiri	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
11.	55/2012	L-42012/105/2012-IR(DU) dated 24.08.2012	Sri M. Vasudevan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
12.	56/2012	L-42012/106/2012-IR(DU) dated 24.08.2012	Sri T. Devraj	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
13.	57/2012	L-42012/107/2012-IR(DU) dated 24.08.2012	Sri S. Gnanavaram	Hindustan Photo Films Mfg.Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
14.	58/2012	L-42012/108/2012-IR(DU) dated 24.08.2013	Sri A. Nazeer	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates

1	2	3	4	5	6	7
15.	62/2012	L-42012/114/2012-IR(DU) dated 12.09.2012	Sri S. Palaniswamy	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
16.	63/2012	L-42012/115/2012-IR(DU) dated 12.09.2012	Sri R. Pandurangan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
17.	64/2012	L-42012/116/2012-IR(DU) dated 12.09.2012	Sri N. Ravichandran	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunasselan	M/s Aiyar Dolia, Advocates
18.	65/2012	L-42012/117/2012-IR(DU) dated 12.09.2012	Sri K. Sreenivasan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar Dolia Advocates
19.	66/2012	L-42012/118/2012-IR(DU) dated 12.09.2012	Sri S. Shankar	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
20.	67/2012	L-42012/119/2012-IR(DU) dated 12.09.2012	Sri J. George	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
21.	68/2012	L-42012/121/2012-IR(DU) dated 12.09.2012	Smt. K. Vimala	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
22.	69/2012	L-42012/120/2012-dated 12.09.2012	Sri T. Suresh Kumar	Hndustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
23.	70/2012	L-42012/112/2012-IR(DU) dated 12.09.2012	Smt. Kalavathy	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
24.	18/2013	L-42012/172/2012-IR(DU) dated 01.02.2013	Sri R.P. Jayakumar	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia, Advocates
25.	19/2013	L-42012/173/202-IR(UD) dated 01.02.2013	Sri J. Jayakumar	Hindustan Photo Films Mfg. Co. Ltd.	Sri. G. Gunaseelan	M/s Aiyar & Dolia, Advocates
26.	20/2013	L-42012/174/2012-IR(DU) dated 01.02.2013	Sri N. Kirubaharan	Hindustan Photo Films Mfg. Co. Ltd.	Sri G. Gunaseelan	M/s Aiyar & Dolia. Advocates

COMMON AWARD

The Central Government, Ministry of Labour & Employment vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

ID 45/2012

"Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri N. Krishnamoorthy in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 46/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri S. Delila Doris in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting

more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 47/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri R. Jayaram Sekar in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 48/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Smt L. lndrani, W/o (Late) Sri Govindan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 49/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri V. Mohan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 50/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri K. Sundarraj in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 51/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri B. Balakrishnan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?

ID 52/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri A. Mani in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"'

ID 53/2012

Wherher the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri R. Papannan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 54/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri P. Singiri in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 55/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri M. Vasudevan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 56/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri T. Devraj in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 57/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri S. Gnanavaram in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?'

ID 58/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri A. Nazeer in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 62/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri S. Palaniswamy in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 63/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-

employment of Sri R. Pandurangan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?'

ID 64/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri N. Ravichandran in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 65/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri K. Sreenivasan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 66/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri S. Shankar in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 67/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri J. George in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 68/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Smt. K. Vimala in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 69/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri T. Suresh Kumar in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 70/2012

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Smt. Kalavathy, in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 18/2013

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri R.P. Jayakumar in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 19/2013

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri J. Jayakumar in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

ID 20/2013

Whether the action of the management of Hindustan Photo Films Mfg. Co. Ltd., Ooty regarding non-employment of Sri N. Kirubaharan in the Hindustan Photo Films Mfg. Co. Ltd., Ooty even after putting more than 17 years service is justifiable or not? If not, what relief the workman is entitled to?"

3. All the above industrial disputes are raised challenging the action of Hindustan Photo Films Manufacturing Co. Ltd., Ooty (who is the Respondent in all the IDs) regarding non-employment of the respective petitioners in the IDs. The schedule of reference in all the IDs is whether the action of the management regarding non- employment of the respective petitioner in the Hindustan Photo Films Manufacturing Co. Ltd. even after putting more than 17 years service is justified or not and if not to what relief the concerned workmen is entitled.

4. The petitioners in all the Claim Statements have contended that they have been employed by the Hindustan Photo Films Manufacturing Co. Ltd. and that even though their appointments were as Trainee/Helper, they were discharging their work in a regular manner and not as Trainees. The Management have terminated their service w.e.f. 07.02.1994 by a notice put in the notice board. All the petitioners alongwith other persons who were terminated alongwith them have filed a Writ Petition before the High Court of Madras challenging the termination order. A single bench of the Madras High Court had granted an interim order allowing them to continue in service. The Management had filed Writ Appeal against this order. The division bench, though found that the petitioners have no case on merits, allowed them to continue in service on the ground that they have been working in the Company for a long period. The Management challenged this order of

Division Bench before the Hon'ble Supreme Court. The Hon'ble Supreme Court had found that the termination of the services of the petitioners is proper.

5. The Respondent had filed IA 3/2013 before this Court contending that the matter having been finally decided by the Apex Court of the land, the claim raised by the petitioners by the present industrial disputes is barred by the principle of res judicata. On considering the contentions of either side, I have found in the IA that the claims of the petitioners are barred in view of the principle of res judicata since the matter has already been decided by the Supreme Court of India. As such the petitioners are not entitled to proceed with their respective claims.

6. The references are answered against the respective petitions. Awards are passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None
For the 2nd Party/Management : None

Documents Marked :
On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 222.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 135/2007) थे डिपार्टमेंट ऑफ पोस्ट्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय बैंगलोर के पंचाट संदर्भ संख्या 135/2007 प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं. एल-40012/13/2007-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No.135/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Department of Posts, Bangalore and their workman, which was received by the Central Government on 31/12/13.

[No.L-40012/13/2007-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUSNAL-CUM-LABOUR COURT, BANGALORE

Dated : 5th September 2013
PRESENT : SHRI S N NAVALGUND, Presiding Officer

C R No. 135/2007

I Party	II Party
Shri Umesh Kumar H, S/o Late Shri H Ramayya R/o D No. 1-1-52/1, Urvastore, Sunkadakatte, Ashoknagar, Mangalore-575 006.	The Senior Superintendent of Post Offices, Department of Posts, Mangalore Division, Mangalore-575 002.

Appearances

I Party : Shri Udayananda A, Advocate

II Party : Shri G K Bhat, Advocate

AWARD

1. The Central Government vide order No. L-40012113/2007- IR(DU) dated 04.10.2007 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of the Senior Supdt. of Post Offices, Mangalore Division, in terminating the services of their workman Shri Umesh Kumar H w.e.f. 23.11.2004, is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference while registering it in C R 135/2007 notices were issued to both the sides. Though the I Party was duly served with notice to appear on 10.06.2010 and to file claim statement on that day he did not appear and it was posted at Mangalore Camp on 23.06.2010 for his appearance and to file claim statement but he did not appear on that day but in the meanwhile on 07.06.2010 a claim statement sent by him through post was received, wherein he has asserted that since 1996 he was working as Postman/ED Agent in various post offices including Kavoor, Kunjathbail, Panjimogaru, Kuioor, Ashoknagar, Level and Mangaladevi Post Offices for over

a period of 10 years and that in the year 2004 he was made to believe that his post will be regularized and made permanent and thereafter the Inspector of Post, Mangalore North Sub-division invited application from him and others for the post of Gramina Dak Service, MC/DK for the regular post but surprisingly his application was not considered and on the other hand he is illegally terminated from the service and as the appeal preferred by him to the Inspector of Post Office, Mangalore North sub-division dismissed without hearing him on the ground that he had not completed 180 days of service and even his second appeal to the Principle Chief Post Master General, Karnataka Circle was not considered and the ALC(C) in the proceedings initiated before him though suggested to reinstate him the same was not considered hence the ll party be directed to reinstate him with backwages and continuity of service. The II Party opposed this claim statement contending that the Department of Post being not an industry within the meaning, scope and ambit of the term in ID Act, 1947 and that it is a public utility service under Section 2 (n) (iii) of the ID Act, 1947, the reference is not maintainable and further the I Party who only intermittently worked in the leave vacancy is not a workman under the act and that such employees are called as Extra Departmental Employees and they are governed by The Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 whose duty hours range from 3 to 5 hours a day and they cannot be classified as workman under the definition of ID Act. The II party further denying all other allegations made in the claim statement regarding his appointment, asking him to apply for the regular post etc. prayed for dismissal of the reference.

3. Since the learned advocate appearing for the II party, insisted to hear on the maintainability of the reference on his contention that the II party is not an industry and the I Party is not a workman as defined under the ID Act, after hearing his arguments by order dated 07.12.2011 the contention of the II party is not an industry and I party not a workman was answered in the Negative. Thereafter, when the matter was posted for Evidence of the II Party the learned advocate appearing for the II party while filing the affidavit of T G Naik, Senior Superintendent of Post Offices, Balamatta swearing to the facts stated in counter statement examined him on oath as MW 1 and got exhibited Attested copy of the GDS Rules, 2001 as amended as Ex M1 and closed his side. lnspite of providing number of adjournments neither I Party nor counsel who filed vakalat for him on 25.08.2010 never turned up as such he was discharged from cross-examination. After discharging MW 1 from cross-examination several adjournments were granted for the I Party to lead evidence and as same was not availed the matter was posted for arguments on merits and even when the matter was posted for arguments on merits the I Party and his counsel since did not turn up after hearing the arguments addressed by the II Party the matter came to be posted for Award.

4. On appreciation of the averments made in the claim statement, contention taken by the II Party in its counter statement and the evidence adduced by the II Party with the arguments addressed by the learned advocate appearing for the II Party, I have arrived at conclusion the I Party since failed to prove his appointment or required period of service as well as termination the reference is liable for rejection for the following

REASONS

5. Since it is not the case of the I Party in his claim statement that he was appointed as Postman/ED Agent in the postal department and in that capacity he served for 10 years and his claim appears to be that he worked as casual worker on the need basis whenever regular employees of the II Party proceed on leave as contended by II Party, if at all he had served in any of the Post Offices as stated in his claim statement. Therefore, it was incumbent upon the I Party to adduce evidence to substantiate the claim made by him in his claim statement. If at all the I party was able to place on record that he continuously worked for a period of 240 days in a calendar year he would have been entitled for the benefit of Section 25(f) of the ID Act which contemplates if such workman is to be terminated he has to be given one month notice in writing indicating the reasons or paid in lieu of such notice, wages for the period of the notice and compensation equivalent to 15 days of average pay for every completed year of service or any part thereon for every six months. But as already adverted to by me above the I Party who sent claim statement through post received on 07.06.2010 and an advocate filed vakalat for him on 25.08.2010 neither cross-examined MW 1, nor adduced any positive evidence to substantiate his claim made in the claim statement. Under the circumstances, I arrive at the conclusion the I party has failed to substantiate that he continuously worked for a period 240 days in a calendar year or termination of his service by the II Party w.e.f 23.11.2004. In the result, the reference being liable for rejection, I pass the following

ORDER

The Reference is Rejected holding that the I Party failed to substantiate having worked for a required period as well as termination of his service by the II party w.e.f. 23.11.2004.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 223.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 54/2001) थे डिपार्टमेंट ऑफ पोस्ट्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 54/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं. एल-40012/133/2001-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No.54/2001) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Department of Posts, Bangalore and their workman, which was received by the Central Government on 31/12/2013.

[No.L-40012/133/2001-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Dated : 10th July, 2013
Present : Shri S. N. Navalgund, Presiding Offiver

C R No. 54/2001

I Party	**II Party**
Shri S Mallikarjuna, R/ at Dasmapura, Hagaribommanahalli, Post Damapur-583 212. Bellary District.	The Senior Superintendent of Post Offices, Bellary District, Bellary-583 101.

APPEARANCES

I Party : Shri D R Vishwanath Bhat, Advocate

II Party : Shri K M Janardhan Reddy Advocate

AWARD

1. The Central Government vide order No. L-40012/133/2001- IR(DU) dated 14.08.2001 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the Sr. Superintendent of Post Offices, Bellary Division, Bellary in terminating the services of the workmen Sh. Mallikarjunaswaran w.e.f. 6/5/2000 is justified? If not, to what relief is he entitled to?"

2. After receipt of the reference while registering it in C R No. 54/2001 when notices were issued to both the sides they entered their appearances through their respective advocates and I Party filed his claim statement on 01.11.2001 and II party its counter statement on 12.03.2002.

3. The I Party in his claim statement claimed that he was employed by the II party as ED Mail Carrier at Dasampura Post Office w.e.f. 15.02.1999 on the Order of Sub-Divisional Inspector (Postal), Hospet and the charge taking was ratified by the BBM Post Office as evidenced by the charge taken report and since then he continuously and diligently and sincerely worked and received his monthly salary and that he was also sanctioned an increment on completion of one year w.e.f. 15.02.2000 and suddenly on 06.05.2000 he was issued with a Memo bearing No. PF/EDMC/Dasamapura/2000 dated 04.05.2000 to relinquish his post on 06.05.2000 afternoon without assigning any reasons. He has further stated that he having worked continuously for a period of 445 days from 15.02.1999 to 06.05.2000 the order dated 04.05.2000 asking him to relinquish the post from 06.05.2000 since amounts to illegal retrenchment as defined under Section 2(00) of ID Act without complying the mandatory provisions of Section 25 F of ID Act, 1947 same is illegal and unsustainable. He also stated in the claim statement the II party ought to have prepared the list of senior employees working in the cadre and should have followed the principle of last come first go as per Section 25(G) of ID Act, therefore, he is entitle for reinstatement with consequential benefits.

4. The ll party in its counter statement without denying the I party having worked from 15.02.1999 to 06.05.2000 contended that his appointment was being purely stop gap till regular appointment •was made after following the prescribed procedure on regular appointment to the post his services having been terminated he is not entitle for any reliefs. It is also contended that as held by the Hon'ble Supreme Court in Civil Appeal No. 3385-8611996 the department of post being not an industry the I party cannot be a workman attracting the provisions of ID Act, 1947 and as a periodical increase in allowance (Time related continuity allowance — TRCA) was given to the I party after completion of one year service that cannot be made use to say that he was a permanent employee. Thus, the action of the ll party in terminating the services I party workman is submitted as justified and that he is not entitled for any relief.

5. After completion of the pleadings my learned predecessor while teceiving the evidence of K H Hosmani, Superintendent of Post Office, Bellary for the II party and exhibiting Ex M-1 to Ex M-4 the detailed description of

which are narrated in the annexure and of the 1 party and exhibiting Ex W-1 to Ex W-14 the detailed description of which are narrated in the annexure and after hearing the arguments addressed by both the sides through Award Dated 27.09.2002 rejected the reference. Aggrieved by the said order when the I party approached the Hon'ble High Court of Karnataka in W P no. 4703/2002 (L-TER) the Hon'ble High Court by order dated 07.02.2013 observing that though the workman has stated that he worked for a period of 14 months continuously, without appreciating the same recorded a finding that there is no material to show that the workman has worked for 240 days the said finding is perverse allowed the Writ Petition quashed the Award with a direction to restore the reference to the file for the adjudication keeping in view the order of reference and pleadings of the parties.

6. After remand by the Hon'ble High Court as directed in its order the learned advocate appearing for the 1 Party and Sh. K M Janardhan Reddy, Additional Standing Government Counsel appeared for the II party and on the same evidence adduced by both the sides earlier addressed their arguments.

7. The learned advocate appearing for the I party while taking me through the pleadings and the documentary evidence produced at Ex W-4 and Ex W-5 urged that there being no dispute I Party having worked continuously from 15.02.1999 to 06.05.2000 for a period of 445 days, abruptly issuing letter produced at Ex W-5 directing him to relinquish the charge on 06.05.2000 amounts to retrenchment as contemplated under Section 2(00) of ID Act, and admittedly there being no compliance of mandatory provisions of Section 25(F) of ID Act, the said termination/retrenchment being illegal he is entitle for reinstatement and full backwages with continuity of service. He also urged that subsequent to the decision of the Hon'ble Supreme Court in Civil Appeal No. 3385-8611996 dated 02.02.1996 reported in AIR 1996 SC 1271 the three judge bench of the Hon'ble Supreme Court of India in the case of General Manager, Telecom Vs. S Srinivas Rao and others while overruling the decision of the Single Judge reported in AIR 1996 SC 1271 held Telecom Department of Union of India being engaged in commercial activity and is not discharging any sovereign functions of the state, it is an Industry, therefore, the contention of the ll party that Post Office is not an industry has no substance. In support of his arguments he cited the decision reported in AIR 1998 SC 656. Interalia, the learned Additional Standing Government Counsel appearing for the ll party submitted that I party was being appointed as Stop-gap arrangement to vacant post arising out of his father's retirement after calling for applications for regular appointment person with merit when came to be appointed his services being discontinued asking him to relinquish from 06.05.2000 as such no notice was required. He also citing the decision reported in AIR 1996 SC 1271 urged that Postal and Telecommunication being held as Not Industry the reference is liable to be rejected.

8. In view of the facts narrated by me above the points that arise for my consideration are :

Point No. 1 : Whether the Post Office is an Industry as defined under Section 2 (j) of ID Act?

Point No. 2 : If yes, whether terminating the service of I party w.e.f. 06.05.2000 asking him to relinquish the charge as per Ex W-5 is justified?

Point No. 3 : What Order?

9. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides in the light of the arguments put forward by the learned advocates appearing for them my finding on Point No. 1 is in the Affirmative, Point No. 2 in the negative and Point No. 3 as per final order for the following reasons :

REASONS

10. The II party in its counter statement while referring to the judgement of the Hon'bie Supreme Court dated 02.02.1996 in Civil Appeal No 3385-86/1996 contended that the Department of Posts and Telecommunication being held as not an Industry the reference is not maintainable and same argument is addressed by the learned standing counsel during the course of arguments. lnteralia the learned advocate appearing for the I party citing the decision of the Hon'ble Supreme Court of India in Civil Appeal no. 7845/1997 dated 18.11.1997 reported in AIR 1998 SC 656 urged that in this subsequent decision of Three Judges Bench along with other judgements the judgement relied upon by the II Party reported in AIR 1996 SC 1271 being overruled and held Telecom Department of Union of India being engaged in Commercial Activity and is not discharging any sovereign functions of the state it is an industry the argument put forward by the II party relying upon a overruled decision has no merit. As urged by the learned advocate appearing for the I Party the Three Judges Bench of the Hon'ble Supreme Court of India in the case of General Manager, Telecom vs. S Srinivas Rao and others reported in AIR 1998 Sc 656 while overruling the decision of the Hon'ble Single Judge of the Supreme Court in Civil Appeal No. 3385- 86/1996 reported in AIR 1996 SC 1271, held Telecom Department of Union of India being engaged in Commercial Activity and is not discharging any sovereign function of the state, it is an industry as defined under Section 2(j) of ID Act, 1947, the contention of the II party that it is not an industry as such reference is not maintainable is bereft of any merits. In the result, I arrive at conclusion of answering this Point No.1 in the Affirmative.

11. **Point No. 2 :** There being no dispute the ll Party having availed the service of I Party from 15.02.1999 to 06.05.2000 continuously for a period of 445 days and asked him to relinquish the charge from officiating as EDMC,

Dasampur from 06.05.2000 afternoon and there being no material he was being engaged with that specific understanding even if his services were temporary till the regular appointment is made as-defined under Section 25 F of the ID Act, 1947 the action of the II Party amounts to illegal retrenchment. If at all as contended by the II party his services were availed temporarily till the post is regularly filled up and a regular recruitment was taken place his services by the II party ought to have been retrenched by giving one months notice in writing indicating the reasons for retrenchment or he ought to have been paid in lieu of such notice besides compensation equivalent to 15 days average pay for every completed year of service and admittedly this being not complied with asking him to relinquish the charge held by him abruptly from 06.05.2000 through communication dated 04.05.2000 which is produced at Ex W-5 is not justified. In the result, I arrived at conclusion of answering this Point in the Negative.

12. **Point No. 3 :** In view of my finding on Point No.1 and 2 the II party is liable to restore the services of the I party as he was holding on the date of his illegal retrenchment i.e. 06.05.2000. Since the I Party due to the illegal retrenchment of his service has not worked for the ll party and his claim that he remained unemployed is not rebutted by any cogent evidence by the II Party having regard to the temporary nature of his service, I feel it just and appropriate to compensate him by paying 25 % of wages payable to him from the date of his illegal retrenchment i.e. 06.05.2000 till he is reinstated and also to treat this period as being in Service for the purpose of computing compensation and other benefits in the event of terminating or retrenching his services. In the result, I pass the following.

ORDER

The reference is allowed holding that the action of the Senior Superintendent of Post Offices, Bellary Division, Bellary, in terminating the services of the workmen Sh. Mallikarjuna w.e.f. 06.05.2000 is not justified and that he is entitle for restoration of his Service with 25% of backwages from the date of termination/illegal retrenchment from service i.e. 06.05.2000 till his service is restored and continuity of service. Under the circumstances, there is no order as to cost.

S. N. NAVALGUND, Presiding Officer

ANNEXURE -1

List of witnesses:

MW I - Sh. K H Hosamali, Superintendent of Post Offices

WW I - Sh. Mallikarjuna, I party workman

Documents exhibited on behalf of the Management:

Ex M - I - Copy of letter addressed to Post Master, Hospet HO dated 18.02.1999

Ex M - 2 - Charge Report and Receipt for cash & Stamps on transfer of charge

Ex M - 3 - Relinquishing Letter addressed to BPM, Dasampura dt. 04.05.2000

Ex M - 4 - Relinquishing Letter addressed to 1 Party dated 04.05.2000

Documents exhibited on behalf of the I party :

Ex W - 1 - Original Postal Life Insurance Policy

Ex W -2 - Gate Pass of the Printers (Mysore) Ltd., dated 18.04.2002

Ex W -3 - Copy of the Kannada Paper cutting dated 27.04.1994

Ex W -4 - Original Charge Report and Receipt for cash and stamps on transfer of charge

Ex W - 5 - Original Relinquishing Letter addressed to I Party dated 04.05.2000

Ex W - 6 - Letter of the Department dated 14.01.1999

Ex W- 7 - Original Experience Letter dated 09.03.1999

•Ex W - 8 - Objection Statement of the 11 Party before ALC(C), Bellary

Ex W - 9 - Photostat copy of the Recruitment Rules

Ex W - 10 - Character Certificate of the I Party issued by Gram Panchayat

Ex W - 11 - Charge Report & Receipt for cash & stamps of Sh. Veerabhadrappa

Ex M - 17 - Reply of I Party on findings

Ex M - 18 - Notice dated 10.03.2006 of Personal hearing

Ex M - 19 - Proceedings of the Disciplinary Authority dated 15.03.2005

Ex M - 20 - Order dated 15.03.2006 of the Disciplinary Authority imposing the punishment

Ex M -21 - Appeal filed by I Party

Ex M - 22 - Letter of personal hearing before the Appellate Authority dated 12.10.2006

Ex M-23- Orders of Appellate Authority dated 22.11.2006.

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतदद्वारा पुरस्कार प्रकाशित करता है (संदर्भ सं. 132/2007) थे प्रिंसिपल, आर्मी पब्लिक स्कूल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्ष्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट संदर्भ संख्या 32/2007 को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-14012/20/2007-आईआर (डी॰यू॰)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 224 In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. 132/2007) of the Central Government Industrial Tribunal/Labour Court, Banglore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Principal, Army Public School, Bangalore and their workman, which was received by the Central Government on 31/12/13.

[F. No. L-14012/20/2007-IR(DU)]
P.K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 12th August 2013
PRESENT : Shri S.N. NAVALGUND
Presiding Officer

C.R. No. 132/2007

I Party	II Party
Shri K Nagappa,	The Principal,
S/o Shri Konda Reddy,	Army Public School,
Valepura Sorahunase Post,	Abdul Hameed Barracks,
Bangalore South Taluk,	K Kamraj Road,
Bangalore - 560 087.	Bangalore - 560 012.

Appearances

I Party : Shri G V P Reddy
Advocate

II Party : Shri Ravishankar Patil
Advocate

ORDERS ON VALIDITY OF DOMESTIC ENQUIRY

1. In this reference made by the Central Government vide Order No. L-14012/20/2007-IR(DU) dated 18.09.2007 for adjudication on the following schedule:

> "Whether the action of the management of Army Public School, Bangalore, in terminating the series of their workman Shri K. Nagappa w.e.f. 30.6.2006 is legal and justified? If not, to what relief the workman is entitled to?"

In view of the assertion made by the I Party in his claim statement that he who was appointed by the II Party as a Driver w.e.f. 06.01.2000 though he was discharging his duties honestly, diligently without any blemish till 01.07.2006, abruptly on the evening of 01.07.2006 the school authorities directed him not to come to the duties without assigning any reasons whatsoever and on the next day 02.07.2006 being Sunday holiday for the school he went to the school on 03.07.2006 to report to the school but was not allowed to discharge his duties and thereafter he received the order of termination dated 30.06.2006 through post along with copies of caveat petition filed before the City Civil Court and Hon'ble High Court of Karnataka and that he was neither served with any Charge Sheet nor Show Cause Notice nor subjected to any enquiry in accordance with the principles of natural justice before passing the said order of termination and the II Party in its counter statement contended that for the misconducts by the I Party a Board of enquiry was constituted to enquire into the charges levelled against him and as he refused to co-operate with the Board of Enquiry and refused to give any statement, the Presiding Officer after observing all the principles of natural justice gave report and findings to the management and the management considering the said report of the enquiry passed order No. 04980/14 dated 30.06.2006 terminating the services of the I party and that in the event this court comes to the conclusion that the enquiry is not fair It reserves its right to adduce additional evidence to drive home the misconduct committed by the I party, the following issues came to be framed as Preliminary Issue :

> "Whether the Domestic Enquiry held against the I party by the II `Party is fair and proper?"

2. After framing the above Preliminary Issue and matter was posted for evidence of ll party on the said issue, on 16.03.2011 the learned counsel appearing for the II Party filed a Memo stating that II party is willing to take back the I party to work without backwages and counsel for I Party submits that I Party is ready to resume to duty w.e.f. 21.03.2011 subject to payment of current wages and accordingly the matter was adjourned to 13.04.2011 observing the II party to take him back w.e.f. 21.03.2011 paying the current wages. On 13.04.2011 the I Party and his counsel made a submission that I Party has been taken to work from 21.03.2011 and Sh. Ramanna, Administrative Officer who represented the II party on that day requested to grant time and accordingly it was posted to 16.05.2011 and thereafter II party counsel after availing several adjournments on 14.07.2011 filed the affidavit of Sh. Vijay Kumar, Primary Teacher and taken time to examine him on oath and examined him on oath on 02.11.2011 and through him got exhibited four documents as Original Report and Findings of the Enquiry into the charges leveled against the I party; Show Cause notice issued to I party dated 03.06.2006 celling upon him to showcause why he should

not be terminated; True copy of the termination order issued to I party dated 30.06.2006; Original Letter dated 01.07.2006 tendered to I party which bears the signatures of the witnesses who were present when it was refused to receive by the I party as Ex M-1 to Ex M-4. Interalia, the learned advocate appearing for the 1 party while examining the I Party as WW 1 did not produce any documentary evidence.

3. With the above pleadings and evidence brought on record the arguments addressed by both the parties were heard.

4. The learned advocate appearing for the I party while taking me through the records urged that it indicates on the basis of an exparte Investigation report purported to have been obtained through a body called Board of Enquiry which is got exhibited as Ex M-1 the impugned action of terminating the services having been effected as such the same is not sustainable and as no charge sheet is issued and enquiry conducted against the I party this court also cannot proceed to record the evidence of II Party on merits and as the II party has taken back the 1 Party to services w.e.f. 21.03.2011 agreeing to pay him current wages the II Party may be directed to pay the full backwages and continuity of service. Interalia, it was argued by the learned advocate appearing for the II party Ex M-2 which is styled as Show Cause Notice can be read as Charge Sheet and as the I party refused to receive the notice and even termination order the enquiry was proceeded exparte as such the I party has to blame himself for having suffered such a termination order as such the enquiry be held fair and proper.

5. On appreciation of the pleadings, oral and documentary evidence brought on record by both the parties and the arguments of learned advocates my finding on the Preliminary Issue is in the Negative and I am also of the opinion that there is no scope to permit the II party to lead evidence to substantiate the charges against the I Party as no charge sheet is served on the I party or produced before the court and in view of the I Party being taken to service w.e.f. 21.03.2011 agreeing to pay him current wages it is just and proper to direct the II Party to pay him 50 % of the backwages and to treat the period from the date of impugned termination of service till taking him back to the services as continued service treating this order as Award for the following.

REASONS

6. Sh. C K Vijay Kumar whose affidavit was filed on behalf of the II party to substantiate the Preliminary Issue though it is stated in his affidavit that he was one of the member of the Board of Enquiry to investigate into the reports of Sh. K Nagappa, Driver/Gardener (I Party) when he was examined on oath In continuation of his affidavit stated that he filed this affidavit being the primary teacher in primary school and one of the Board of member to investigate into the reports against the I party. In his cross-examination when he was asked how many members the board of enquiry consisted he stated that he is only member of the board of enquiry and that Principal of the school has nominated him as the member of the board of enquiry by issuing a letter in that regard but no such letter nominating him as the member of the board of enquiry or constituting any board of enquiry is produced. Further he states in his cross-examination that in the enquiry he Just acted as translator and is not aware of any other thing regarding the enquiry. On the other hand the file produced by the II party as enquiry file from which Ex M-1 to Ex M-4 have been got exhibited through MW 1 indicates that there was a exparte report obtained from a Board of Enquiry which is got exhibited as Ex M-4and after receiving that report issued a show cause notice i.e. got exhibited as Ex M-2 to show cause why his services should not be terminated on disciplinary grounds without holding any Domestic Enquiry. I believe having regard to this position the II Party management has taken back to services I party w.e.f. 21.03.2011 agreeing to pay him the current wages. Absolutely there is no indication in the file produced by the II party as enquiry file to suggest or indicate the I party having been subjected to the Domestic Enquiry by serving charge sheet for any misconduct on his part. If at all after obtaining an Ex-parte Investigation Report got exhibited as Ex M-1, the II Party has issued the show cause notice produced at Ex M-2 and I Party failed to give reply It would have taken a decision to hold Domestic Enquiry, serve charge sheet, appoint the Enquiry Officer and subjected him to the enquiry and after receiving the enquiry report would have taken appropriate decision to punish him. When no charge sheet is either served on the I Party or produced before the court as one intended to enquire into even this court cannot proceed to take the evidence of II Party for any misconduct against the I Party. Apart from this as already adverted to by me above having regard to such a position of the matter the II party having taken the I Party into service w.e.f. 21.03.2011 the only point that remains for the consideration is whether it can deny him the wages for the period from date of termination of service till he is taken back into secvices. When the I party had been terminated from services without holding any Domestic Enquiry and he has been reinstated into service *w.e.f.* 21.03.2011 there is no reason to deny him the wages for the period from the date of his termination of his service till he is taken back to services. However, having regard to the nature of services of the I party and no work is done by him during this period, I feel it just and proper to direct the II party to pay him 50% of the wages payable to him for this period and to treat this period as continued service to meet the ends of justice. In the result, I pass the following

ORDER

The Preliminary Issue is answered in the Negative i.e. no Domestic Enquiry has been conducted as such his

termination is illegal and as he has already been reinstated into service *w.e.f.* 21.03.2011 agreeing to pay him current wages the II party shall pay him 50 % of the wages payable from date of his termination till he has been reinstated into service on 21.03.2011 and also to treat this period as continued service. This order shall be treated as Award and sent for publication in the gazette.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 225.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता हैं (संदर्भ संख्या CGITA 1201 /2004) थे डिपार्टमेंट ऑफ पोस्ट्स के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्ष्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट संदर्भ संख्या CGITA 1201 /2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40012/14/2002-आईआर (डी॰यू॰)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference (CGITA) 1201/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Department of Posts, Ahmedabad and their workman, which was received by the Central Government on 31/12/13.

[F. No. L-40012/14/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad, Dated 21st October, 2013

Refernce: (CGITA) No-1201/2004
Reference (I.T.C) No. 16/2002 (old)

Adjudication Order No. L-40012/14/2002 [(IR (DU)] New Delhi, Dated 03.06.2002

1. The Sub Post Master
Dept. Of Post,Head Office,
Veraval, Junagarh

2. The Post Master general, Rajkot region

3. The Superintendent of Post Offices,

Department of Post office, Gandhidham, District-Junagarh

4. The Chief Post Master General, Gujarat Circle,

Ahmedabad .....(Management) First Party

And

Their Workman,
Sh. Jayantilal Ravalal Kecha
Tagore Society No.2,
Near Karmyog, Dabhor Road,
Veraval

Dist: Junagarh .....(Workman) Second Party

For the first party: Shri Pravinchandra M. Rami,
Asst. Govt. Pleader & Advocate
(Labour & Industrial Court)

For the second party: None

AWARD

The Central Govermment/Ministry of Labour, New Delhi by its adjudication order No L-40012/14/2002 (IR(DU)], dated 03.06.2002 referred the dispute under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, for adjudication to the Industrial Tribunal, Rajkot on the terms of reference in Schedule:

SCHEDULE

"Whether the action of the management of Supt. Post office, Junagadh/Sub Post Master, Veraval to discontinue the services of Sh. Jayantilal Revalal Kacha and not to give employment is justified and legal? If not, what relief the workman is entitled for and since when?"

2. Upon notices the parties appeared and filed pleadings. The 2nd party (workman) as per statement of claim (Ext 2) was serving at Veraval sub post office as E.D. Packer since 1986. He rendered his service with sincerity. But even then he was discharged from his service *w.e.f.* 07.01.2001 without serving any notice or notice pay in lieu there of or without retrenchment compensation. He requested the 1st party to reinstate him in service but all went invain, thereafter he served demand notice on 18.04.2002. His juniors were retained at the time of his discharge. He tried elsewhere but could not get engagement. He is not gainfully employed. On this scores, prayer is for his reinstatement with full back wages and for cost.

3. As against this, the contention of the 1st party as per w.s. Ext.3 is that the workman was engaged as substitute in leave vacancy of regular staff and he never completed

240 days in any calendar year so he was not entitled for notice pay and retrenchment compensation. It is untrue that juniors were retained at the time of discharge of the workman. The reference is not maintainable and is liable to be rejected.

4. The 2nd party workman left doing *pairvi* in this case when the case record was pending for leading evidence by the 2nd party in the Industrial Court, Rajkot. Thereafter case record received on transfer to this tribunal. But even on issuance of notices, the 2nd party, remained absent and did not attend in this case whereas the 1st parties remained attending the court through its advocate (A.G.P.)-on dates. On behalf of the 1st party pursis were being filed that the case is fixed, for leading evidence of the workman and the 1st party remains ready to cross-examine him but no evidence adduced and the workman used to remain absent and prayed to close the case of the workman and to dismiss the reference.

5. The workman who raised dispute as result reference was sent for adjudication, but workman side appears to have lost interest.

This reference is devoid of any merit and so is dismissed exparte.

The terms of reference is answered in favour of the management of the 1st party that the action of the 1st party is justified in discontinuance of service of the workman Jayantilal Rewalal Katecha *w.e.f.* 07.01.2001. The workman is not entitled to any relief.

This is my Award.

Let a copy of award sent to the appropriate Government for publication u/s 17(1) of the I.D. Act.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 226.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार एतद्द्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 29/2005) थे जनरल मेनेजर, बीएसएनएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट संदर्भ संख्या 29/2005 प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40011/2/2005-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No.29/2005) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, BSNL, Belgaum and their workman, which was received by the Central Government on 31/12/13.

[No. L-40011/2/2005-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26th NOVEMBER 2013
PRESENT : Shri S N NAVALGUND, Presiding Officer

C R No. 29/2005

I Party	II Party
Sri C M D'souza, C/o Sri Ashok M Kambi, Plot No. 2, Telecom Layout, Sadashivanagar, BELGAUM — 590 001.	The General Manager, O/o the General Manager, BSNL, Bharat Telecom District, Swaroop Plaza, Tilakwadi, BELGAUM --590 006.

Appearances

I Party : Shri A M Kambi
Authorised Representative

II Party : Shri Y Hari Prasad
Advocate

AWARD

1. Initially the Central Government vide Order L-40011/2/2005-IR(DU) dated 31.05.2005 had made this reference for adjudication inadvertently to the CGIT-cum-Labour Court, Kokatta on the following schedule for adjudication and later by issue of corrigendum dated 08.07.2005 made over the reference to this tribunal

SCHEDULE

"Whether the action of the management of BSNL, in not offering re-employment to the said 23 retrenched workmen as per Section 25 H of the Industrial Dispute Act, 1947 is justified or not? If not, to what relief the aggrieved workmen are entitled to?"

2. On receipt of the reference and the corrigendum while registering it in C R 29/2005 when notices were issued to both the sides they entered their appearance and the Authorised Representative appearing for the I Party under the signature of one of the workman (Sl. No. 9 of the list of workmen annexed to the reference) filed claim statement and the learned advocate appearing for the II Party filed the counter statement under the signature of Assistant General Manager (Admn.), Office of the General Manager Telecom Belgaum.

3. In the claim statement it is alleged the 23 workmen covered in this reference who were earlier retrenched by the employer/II Party are refused to be re-employed in the vacancies that arose after their retrenchment which is violative of Rule 78 of Industrial Dispute (Central) Rules 1957 and Section 25H of ID Act, 1947. It is further alleged the II Party instead of re-employing these retrenched workmen resorted to engagement of contract labours which were previously occupied by regular workers which is an unfair labour practice under the provisions of ID Act. It is further alleged that there are about 700 vacancies of Mazdoors in Belgaum Telecom District which are being manned by contract and other type of labourers which is evident from the correspondence between the management and CGMT, Karnataka Circle, Bangalore requesting for 695 regular posts of Mazdoors vide its OM NO. E-3/ROC/RM/K and that most of the persons is who are employed as Security Guards are doing regular and perennial nature of work in the establishment showing them as Security Guards to avoid legal complications of labour laws. Hence, the ll Party be directed to re-employ them.

4. In the counter statement it is contended the case of these 23 workmen was in the first instance rejected by the Ministry of Labour, GOI, New Delhi considering as not fit for reference for belatedly raising this dispute after long delay without justifying reasons and that there were no vacancy existing to employ them and that the contract tenders were assigned for work of different natures for safe guarding the telecom installations and not for mazdoor posts for which there is no sanction at all and some of them were being employed after 1985 and some of them had not even completed 240 days as such they are not entitle for any re-employment.

5. When the matter was posted for Evidence initially the learned advocate appearing for the lI Party had filed the affidavit of one V Ravishankar, Assistant General Manager (Admn.) and before examining him on oath while filing an application on 25.02.2011 discarding the said affidavit evidence filed the fresh affidavit of M K Waingade, Assistant General Manager (Admn) on 25.05.2011 and additional affidavit on 24.08.2011 swearing to the facts of the counter statement and by examining him on oath as MW 1 got exhibited Ex M-1 to Ex M-20 the detailed description of which are narrated in the annexure. Inspite of providing sufficient opportunities since MW 1 was not cross-examined he was discharged from cross-examination and after affording several opportunities to lead rebuttal evidence to the I Party since the same was not availed the matter was posted for arguments and the learned advocate appearing for the II Party alone filed his written arguments reiterating the contents, of counter statement.

6. As adverted to by me above the I Party except filing a claim statement did not participate in the proceedings and left the evidences lead by the II Party through MW 1 unchallenged either by his cross examination or leading any rebuttal evidence. Section 25H gives preference to a retrenched workman for being re-employed whenever the. employer had occasion to employ another hand and this preference is also not available to the casual labourers and they can claim the preference in case of casual employments only. As stated in the claim statement itself they worked as Mazdoors whereas the subsequent availment of service of contract workers is as Security Guards and they failed to prove that they are actually employed to do the work of mazdoors in the name of Security Guards to avoid the legal complications arising out of labour law as contended by them. The initial burden was on the I Party workmen that they worked against the existing post as a temporary employees/mazdoors and after their retrenchment some others have been employed through contract labours but they having failed to discharge this burden it cannot be held that they were entitle for the benefit of Section 25H or there has been violation of the mandate of Section 25H and Rule 78 as contended by them. Under the circumstances, the reference is liable to be rejected holding that the action of the management of BSNL is not offering re-employment to the said 23 retrenched workmen as per section 25-H of the Industrial Disputes Act 1947 is justified in the result, I pass the following.

ORDER

The reference is rejected holding that the action of the management of BSNL is not offering re-employment to the said 23 retrenched workmen as per Section 25-H of the Industrial Dixputes Act, 1947 is justified and that they are entitle for any relief.

S.N. NAVALGUND, Presiding Officer

ANNEXURE—I

Witnesses examined on behalf of Management:

MW 1 -Sh. M K Waingade, Assistant General Manager

Witnesses examined on behalf of Workman:

Nil

Documents exhibited on behalf of the Management:

Ex M-1	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/30/93-AM dated 28.03.1994
Ex M-2	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/20/93-AM dated 28.02.1994
Ex M-3	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/7/94-AM dated .02.1996
Ex M-4	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/25/93-AM dated 28.02.1994

Ex M- 5	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/25/93-AM dated 28.02.1994
Ex M-6	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/54/93-AM dated 27.08.1994
Ex M-7	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/49/93-AM dated 04.05.1994
Ex M-8	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/38/95-AM dated 27.12.1995
Ex M-9	Letter of Sh. K V B Unny, Desk Officer addressed to II Party In respect of FOC No. 8/5/94-AM dated 30.05.1994
Ex M-10	Letter of Sh. K V B Unny, Desk Officer addressed to II Party in respect of FOC No. 8/3/94-AM dated 26.05.1994
Ex M-11	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/31/93-AM dated 28.03.1994
Ex M-12	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/42/93-AM dated 02.05.1994
Ex M-13	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/27/93-AM dated 28.02.1994
Ex M-14	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/51/93-AM dated 05.05.1994
Ex M-15	Letter of Sh. K V B tunny, Desk Officer addressed to II Party In respect of FOC No. 8/28/93-AM dated 28.02.1994
Ex M-16	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/4/94-AM dated 03.05.1994
Ex M-17	Letter of Sh. K V B tunny, Desk Officer addressed to ll Party in respect of FOC No. 8/6/94-AM dated 31.05.1994
Ex M-18	Letter of Sh. K V B tunny, Desk Officer addressed to II Party In respect of FOC No. 8/52/93-AM dated 05.05.1994
Ex M-19	Letter of Sh. K V B tunny, Desk Officer addressed to II Party in respect of FOC No. 8/36/93-AM dated 31.03.1994
Ex M-20	Letter of Chief General Manager Telecom, Bangalore addressed to Chief General Manager, Chennal, dated 24.12.2002 regarding regularisation of temporary status mazdoor—Sh. S K Dinde

Documents exhibited on behalf of the I party:

Nil

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 227.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण मे केन्द्रीय सरकार एतद्द्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या CGIT/NGP/06/2011-12) थे डायरेक्टर नीरी, नागपुर, मैसर्स एग्ले सिक्यूरिटी एंड पर्सनेल सर्विसेज मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट संदर्भ संख्या CGIT/NGP/06/2011-12 प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[फा॰सं॰ एल-42011/57/2010-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No.CGIT/NGP/06/2011-12) of the Central Government Industrial Tribunal/Labour Court , Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director, NEERI, Nagpur , M/s Eagle Security & Personnel Services, Mumbai and their workman, which was received by the Central Government on 31/12/13.

[F. No. L-42011/57/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/06/2011-12 Date: 20.11.2013

Party No.1(a)	:	The Director, NEERI, Nehru Marg, Nagpur-20
(b)	:	M/ s. Eagle Security & Personnel Services Contractor, Rep. by Shri C.H. Sharma, Prop., 12, Nirmala CHS Ltd., J.P.Road, Andheri (W), Mumbai-58

Versus

Party No.2	:	President/ Secretary, NEERI Thekedari Mazdoor Sangh, O/o. BMS, Opp. of Apna Bhandar, Mandir Marg, Sitabuldi, Nagpur

AWARD

(Dated: 20th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in

short), the Central Government has referred the industrial dispute between the employers, in relation to the management of NEERI and their union, NEERI Thekedari Mazdoor Sangh, for adjudication, as per letter No.L-42011/57/2010-IR (DU) dated 15.04.2011, with the following schedule:-

SCHEDULE

"Whether the action of the Respondent management of NEERI as well as contractor M/s. Eagle Security and Personnel Services Industrial and Commercial Service for suspending the six contract workers w.e.f. 10.08.2009 to 16.08.2009 and for non-payment of wages for the period from 10.08.2009 to 13.08.2009 to all the remaining contract workers who protested the action of the management of NEERI is legal and justified? What relief all the contract workers of NEERI are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "NEERI Thekedari Mazdoor Sangh," ("the union" in short), filed the statement of claim and the management of NEERI, ("Party No. 1" in short) filed its written statement.

The case of the workmen as presented by the union in the statement of claim is that there were about 174 contract workers in the industrial establishment of party No.1(a) and out of them, 142 workers were engaged in the office of party No.1(a) at Nagpur and the rest of them were spread all over the country in various zonal laboratories and at the relevant point of time, M/s. Eagle Security & Personnel services, Mumbai, party No.1(b) was the contractor in charge of the Sham and Bogus contract system, being employed by the party No.1(a) since the last 20 years to engage workers, in work of regular and permanent nature, so as to deny the workers the benefits of regularisation and permanency in the establishment of party No.1(a) and separate proceedings have been initiated by it to declare the sham and bogus system of contract labour as illegal and for the regularisation and permanency of the workers. It is further pleaded by the union that the contract workers are direct workers of party No.1 and the six workmen, namely, Vinod Pawar, Krishna Sagarkar, Sudhir Werulkar, Sushil Wase, Rajendra Lilare and Anand Raut though did not commit any misconduct, were orally suspended for six days from 10.08.2009 to 15.08.2009, without following the principles of natural justice and therefore their suspension is illegal ab initio and the illegal suspension of the aforesaid six workmen created tension and there was some disturbance and everyone silently put off the work wondering about the action of party No.1(a) and there was no strike as such and without following the principles of natural justice and without giving any letter to the rest of employees about any act of alleged illegal strike restored by them, their wages for the period from 10.08.2009 to 13.08.2009 was deducted by Party No. 1(a) illegally and the six workmen named above are entitled for their salary for the period from 10.08.2009 to 15.08.2009 and the rest of the 136 employees are entitled for their salary from 10.08.2009 to 13.08.2009.

3. The party No.1(a) in the written statement has pleaded inter-alia that it is neither an industry nor an industrial establishment and it is a research institute and it is one of the National RND laboratory of council of scientific and Industrial Research (CSR), New Delhi, which is an autonomous body and a society registered under the Societies Registration Act, which comes in aegis of Ministry of Science Technology, Govt. of India and it is purely a research oriented institute and as such, it does not fall within the definition of "industry" and as such, the dispute as raised is not maintainable. It is further pleaded by party No.1(a) that it is the Principal employer and is duly licenced under the Contract Labour (Regulation and Abolition) Act and party No.1(b) is the independent contractor to whom the contract was awarded at the relevant time and who had engaged the employees and hence, there was no contractual relationship between it and the workmen and on that count also, the reference is liable to be answered in the negative and the reference is also not maintainable as becaue, the workmen through the union and party No.1(b) had already recorded a settlement on 12.08.2009 before the ALC and the workmen had agreed to join duties on "no work no pay" basis and the workmen are esstopped from acting contrary to the agreed settlement and they have suppressed these facts before the Tribunal and have not approached the Tribunal with clean hands. The further case of the party No.1(a) is that it had awarded contract to party No.1(b) for a period of one year w.e.f. 01.09.2008 to 31. 08.2009 for 3 jobs, under different heads and a letter of award on agreed terms and conditions was given to party No.1(b) by it on 21.08.2008 and on 25.07.2009, the six workmen were deployed by party No.1(b) to work with it and all of them were found to have consumed alcohol in its premises, which was detected during regular inspection by security in charge at 5.PM and a written report was submitted by the security incharge on 27.07.2009 and the party no.1(b) was summoned by it and the party No.1(b) visited Nagpur on 31.07.2009 and in view of the misconduct committed by the said six workmen, it directed the party No.1(b) to discontinue them from its services at least for one month and on 10.08.2009, the party No.1(b) did not allow those six workmen to work in NEERI and as such, they were not allotted the respective tokens and there was no bar to engage them by party No.1(b) at some other places and for that, the other workmen engaged by party No.1(b) resorted to illegal strike and did not report for their respective jobs, even though, they were not prevented from performing their jobs and the indefinite strike restored by the workmen was reported to Dhantoli Police Station and to the Collector and on 12.08.2009, the settlement was arrived at by the workmen and party No. 1

(b) and it was agreed between them that the suspension period of the six workmen would be reduced to 7 days and they would be permitted to join duty with effect from 17.08.2009, provided the other workmen would withdraw the illegal strike w.e.f. 13.08.2009 and the period of absence of the workmen would be treated as no work no pay and inspite of such settlement, the workmen did not report to work on 13.08.2009 and with the intervention of the MLA, Shri Devendra Fadnavis, the workmen reported to work from 1.30 PM on 14.08.2009 and as such, the workmen are not entitled to any relief.

4. It is to be mentioned here that the party No.1(b), the contractor, Eagle Security and Personnel Services though appeared in the case on 07.06.2011 on receipt of notice and took time to file written statement, thereafter, neither it appeared nor filed any written statement nor contested the case.

5. It is also necessary to mention here that after receipt of the copy of the written statement on 04.07.2012, neither the union nor the workmen appeared in the case and contested the same. Even though sufficient opportunities were given to the union to adduce evidence in support of its claim, no evidence was adduced. So, the reference was closed on 23.10.2013 and the same was posted for award.

6. In the written notes of argument, it was mentioned by the learned advocate for the party No.1(a) that as the union has failed to produce any evidence in support of its claim, the reference is to be answered in the negative.

7. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail.

In this case, neither the union nor the workmen have adduced any evidence in support of their claim. So applying the settled principles as mentioned above to the case in hand, it is found that the workmen are not entitled to any relief and the reference cannot be answered in their favour. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The union as well as the workmen are not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 जनवरी, 2014

का॰आ॰ 228.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी डिपार्टमेंट ऑफ पोस्ट्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, अहमदाबाद के पंचाट संदर्भ संख्या CGITA 88/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-40012/56/2005-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 2nd January, 2014

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Reference (CGITA)88/2005] of the Central Government Industrial Tribunal/Labour Court , Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Department of Posts, Jamnagar and their workman, which was received by the Central Government on 31/12/13.

[F. No. L-40012/56/2005-IR(DU)]
P.K.VENUGOPAL Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present....
Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court, Ahmedabad,
Date: 21st October, 2013

Reference (CGITA) NO.88/05
Adjudication order No. L-40012/56/2005 (IR(DU)), New Delhi dated 26.09.2005

The Superintendent of Post offices,
Department of Post, Jamnagar Division,
Jamnagar-362001 .....(Management) First Party

And

Their Workman
Shri N.N. Chandravadia
Bharatpur, Tal: Bharivad
Jamnagar-361001 ...(workman)Second Party

For the First Party : Shri Pravinchandra M. Rami
Asst. Govt. Pleader & Advocate
(Labour & Industrial Court)
For the Second Party : None

AWARD

The Central Government /Ministry of Labour, New Delhi by its adjudication order No. L-40012/56/2005-IR(DU)) dated 26.09.2005 referred the dispute for adjudication on the terms of reference in Schedule:

SCHEDULE

"Whether the action of the superintendent of post offices, Jamnagar in terminating the services of Shri

N.N. Chadravadiya w.e.f. 02.07.2003 although he has completed more than 240 days in several years under the same management as GDS BPM is legal and justified? If not what relief the workman concerned is entitled to?"

2. Upon notice for filing statement of claim and w.s. and documents the parties appeared. The 2nd" party workman filed statement of claim (Ext.7) stated that he was engaged to work on the vacant post from 28.12.1998 at Bharatpur village post office by the 1st party and was completing 240 days of work every year, but without giving notice or notice pay and retrenchment compensation he was orally terminated w.e.f. 02.07.2003 prayer is to declare the order of termination unjust, improper and illegal for his reinstatement with back wages and continuity of services with cost.

3. The contention of 1st party as per w.s. (Ext.10) is that the workman under temporary order was engaged by Extra Department Branch Post Master 18.12.1998, denying that workman was working on vacant post is permanent way. He was appointed purely on stop gap arrangement at Bharatpur branch office under Bhanvad Sub Post Office. The regular incumbent was under suspension and was put off duty so the workman was engaged temporarily. The provision of temporary arrangement and liability of termination is also clearly mentioned in his initial appointment. The claim of workman is false and so reference is not maintainable and is liable to be dismissed.

4. The case is running on date for evidence on behalf of the 2nd party workman but the 2nd party workman is absent since after submitting statement of claim and so appears to have cost interest in this case. On the other hand, the 1st party remains in attendance through A.G.P. P.M. Rami who filed pursis Ext.14, 15 and 16 to stop the right to lead evidence by the 2nd party workman. By order dated 21.10.2013 below Ext.16 the right of 2nd party to lead evidence was closed.

5. The pleadings of 2nd party laying claim is not substantive evidence rather a party is required to prove its case/claim through evidences —oral and documentary. But the 2nd party (workman) has failed to establish his claim in this case. So the order is passed that the action of the 1 st party in terminating the services of 2nd party is legal and justified. The 2nd party is not entitled to any relief.

This reference is dismissed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

का॰आ॰ 229.—औद्योगिक विवाद अधिनियम, 1947, 1947 का (14 कि धारा 17) के अनुसरण में केंद्रीय सरकार मध्य बिहार ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट संदर्भ संख्या 6/2013, 7/2013, 9/2013, 10/2013, 13/2013, 14/2013, 15/2013, 16/2013, 17/2013, 18/2013, 19/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 27/2013, 28/2013, को प्रकाशित करती है, जो केंद्रीय सरकार को 03/01/2014 को प्राप्त हुआ था।

[फा॰ सं॰ एल-12011/08/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/12/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/20/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/26/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/24/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/23/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/45/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/47/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/49/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/15/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/09/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/10/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/18/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/27/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/25/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/44/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/46/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/48/2013-आई आर (बी-I),
फा॰ सं॰ एल-12011/50/2013-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

S.O. 229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2013, 7/2013, 9/2013, 10/2013, 13/2013, 14/2013, 15/2013, 16/2013, 17/2013, 18/2013, 19/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 6/2013, 27/2013, 28/2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Madhya Bihar Gramin Bank and their workman, received by the Central Government on 3/1/2014.

[F. No. L-12011/08/2013-IR(B-I),
F. No. L-12011/09/2013-IR(B-I),
F. No. L-12011/12/2013-IR(B-I),
F. No. L-12011/10/2013-IR(B-I),
F. No. L-12011/20/2013-IR(B-I),
F. No. L-12011/18/2013-IR(B-I),
F. No. L-12011/26/2013-IR(B-I),
F. No. L-12011/27/2013-IR(B-I),
F. No. L-12011/24/2013-IR(B-I),
F. No. L-12011/25/2013-IR(B-I),
F. No. L-12011/23/2013-IR(B-I),
F. No. L-12011/44/2013-IR(B-I),
F. No. L-12011/45/2013-IR(B-I),

F. No. L-12011/46/2013-IR(B-I),
F. No. L-12011/47/2013-IR(B-I),
F. No. L-12011/48/2013-IR(B-I),
F. No. L-12011/49/2013-IR(B-I),
F. No. L-12011/50/2013-IR(B-I),
F. No. L-12011/51/2013-IR(B-I)]

SUMATI SUKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (I) (d) (2A) of 1.D.Act. 1947

Reference Nos : 6/2013, 7/2013, 9/2013, 10/2013, 13/2013, 14/2013, 15/2013, 16,2013, 17/2013, 18/2013, 19/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 27/2013, 28/2013

Parties: Employer in relation to the management of Madhya Bihar Gramin Bank, Patna

AND

Their workmen.

Presient : Sri R.K.Saran , Presiding Officer.

Appearances :

For the Employers : None

For the workman. : Sri Arun Kumar Singh, Rep.

State : Bihar Industry : Banking

Dated 11/11/2013

AWARD

The central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

Ref. No. 6/2013 [Order No. L-12011/08/2013-IR (B-I) dated 17/5/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 7/2013 [Order No. L-12011/09/2013-IR (B-I) dated 17/5/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 9/2013 [Order No. L-12011/12/2013-IR (B-I) dated 20/5/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 10/2013 [Order No. L-12011/10/2013-IR (B-I) dated 28/5/2013]

Schedule Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 13/2013 [Order No. L-12011/20/2013-IR (B-I) dated 4/6/2013]

Schedule "Whether the action of the manogetntint or Madhya Bihar Grainin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 14/2013 ([Order No. L-12011/18/2013-IR (B-I) dated 4/6/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 15/2013 [Order No. L-12011/26/2013-IR (B-I) dated 17/6/2013]

Schedule " Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of (1) Sri Madan Mohan Ram (2) Sri Parmeshwar Prasad (3) Nagendra Kumar (4) Sri Deepak Kumar who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No.16/2013 [Order No. L-12011/27/2013-IR (B-I) dated 17/6/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services (1) Sri Ramesh Kumar Shukla (2) Sri Arun Kumar (3) Sri Ashok Kumar Mandal (4) Sri Santosh Tiwary (5) Sri Biraju Kumar who worked as part time sweeper in the branch of the Bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 17/2013 [Order No. L-12011/24/2013-IR (B-I) dated 17/6/2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in

terminating the services (1) Sri Mahabir Ram (2) Sri Manoj Kumar Sah (3) Sri Surendra Kumar (4) Sri Budhan Singh, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 18/2013 [Order No. L-12011/25/2013-IR (B-I) dated 17.6.2013]

Schedule " Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of (1) Sri Pintu Kumar Singh (2)Sri Uday Kumar Singh (3) Sri Manajar Kumar (4) Sri Dilip Kumar Singh, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 19/2013 [Order No. L-12011/23/2013-IR (B-I) dated 17.6.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of (I) Dilip Kumar (2) Sri Dharmendra Kumar (3) Sri Nagdesh Ram (4) Sri vijay Thakur, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?"

Ref. No. 21/2013 [Order No. L-12011/44/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 9 years. If not what relief they are entitled for?"

Ref. No. 22/2013 [Order No. L-12011/45/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

Ref. No. 23/2013 [Order No. L-12011/46/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

'Ref. No. 24/2013 [Order No. L-12011/47/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

Ref. No. 25/2013 ([Order No. L-12011/48/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

Ref. No. 26/2013 [Order No. L-12011/49/2013-IR (B-I) dated 19.7.2013]

Schedule "Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

Ref. No. 27/2013 [Order No. L-12011/50/2013-IR (B-I) dated 19.7.2013]

Schedule " Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

Ref. No. 28/2013 [Order No. L-12011/24/2013-IR (B-I) dated 19.7.2013]

Schedule " Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for?"

2. After receipt of the reference. The Secretary of Sponsoring Union of all reference submitted that the same management and same workman's dispute is pending before the state Labour Court Patna for decision. Accordingly he prays to withdraw the reference pending before this Tribunal. This being the situation it is felt that presently, there is no dispute between the parties. Hence no dispute award is passed. Communicate.

R. K. SARAN, Presiding Officer

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